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VOL. II.

XLV. of 1860—Penal Code.

I. of 1872—Evidence Act.

V. of 1898—Criminal Procedure Code.

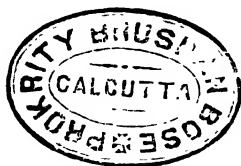
V. of 1908—Civil Procedure Code.

THE
INDIAN PENAL CODE

BEING

ACT NO. XLV. OF 1860.

(As amended up to July 1913.)



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THE INDIAN PENAL CODE

(Act XLV. of 1860.)*

RECEIVED G.-G.'S ASSENT ON OCTOBER 6, 1860.

CHAPTER I.

INTRODUCTION.

WHEREAS it is expedient to provide a General Penal Code for British India; It is enacted as follows :—

* All offences under the Penal Code are to be enquired into and tried according to the provisions of the Criminal Procedure Code (Act V. of 1898) —See ss. 5 and 28 of Act V. of 1898.

The Penal Code is superseded by the Sindh Frontier Regulation (V. of 1872), s. 11. in so far as that Regulation is consistent with it.

As to offences which may be tried summarily, see ss. 260 and 261 of the Code of Criminal Procedure (Act V. of 1898).

The Penal Code has been applied to offences committed before the 1st January 1862—

(1) in the Punjab, by Act IV. of 1872, s. 39;

(2) in Ajmere-Merwara, by Reg. III of 1877, s. 29.

The Code has been declared in force—

(1) in the Santhal Parganas, by Reg. III. of 1872, s. 3, as amended by Reg. III of 1899;

(2) in the Arakan Hill District, by Reg. IX. of 1874, s. 3;

(3) in Upper Burma generally (except the Shan States), by Burma Laws Act (XIII. of 1898), s. 4 (1), and Sch. I.;

(4) in British Baluchistan, by Reg. I. of 1890, s. 3;

(5) in Angul and the Khondmals, by Reg. I. of 1894, s. 3;

(6) in the Kachin Hill-tracts, as regards hill-tribes (with modifications), by Reg. I. of 1895, s. 3;

(7) in Chin Hills as regards hill-tribes (with modifications), by Reg. V. of 1896, s. 3;

(8) in the Chittagong Hill-tracts, by Reg. I. of 1900, s. 4.

The Code has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely :—

1. This Act shall be called "The Indian Penal Code," and shall take effect . . . *
 Title and extent of operation of the Code. throughout the whole of the territories which are or may become vested in Her Majesty by the Statute 21 and 22 Victoria, Chapter 106,† entitled "An Act for the better Government of India." . . . ‡

2 Every person shall be liable to punishment under this Code, and not otherwise, for every act or omission contrary to the provisions thereof, of which he shall be guilty within the said territories. . . §
 Punishment of offences committed within the said territories.

3. Any person liable, by any law passed by the Governor-General or India in Council, to be tried for an offence committed beyond the limits of the said territories, shall be dealt with according to the provisions of this Code for any
 Punishment of offences committed beyond, but which, by law, may be tried within, the territories.

(1) the N.-W. P. Tarai Districts (see *Gazette of India* 1876, Pt. I, p. 503); and

(2) the Districts of Hazaribagh, Lahardaga, and Manbhoom and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum (see *Gazette of India*, 1881, Pt. I., p. 504).

By notification under ss. 3 and 5A of the same Act, it has been declared in force in the Pargana of Manpur in Central India (see *Gazette of India*, 1899 Pt. II, p. 419). It has been extended, under s. 5 of the same Act, to the Lushai Hills (see Notification No. 923-P., *Gazette of India* 1898, Pt. II., p. 345).

* In s. 1, the words and figures, "on and from the first day of May, 1861," repealed by the Repealing and Amending Act (XII. of 1891), Sch. I., have here been omitted.

† This Statute may now be cited as the Government of India Act, 1858.—See the Short Titles Act, 1859.

‡ In s. 1, the words, "except the Settlement of Prince of Wales's Island, Singapur, and Malacca," repealed by the Repealing and Amending Act (XII. of 1891), Sch. I. have here been omitted.

§ In s. 2, the words and figures, "on and from the first day of May, 1861," repealed by the Repealing and Amending Act (XII. of 1891), Sch. I., have here been omitted. As to offences in territorial waters, see the Territorial Waters Jurisdiction Act, 1878 (Stat. 41 & 42 Vict., c. 73).

act committed beyond the said territories in the same manner as if such act had been committed within the said territories.

Extension of Code to extraterritorial offences. **4.*** The provisions of this Code apply also to any offence committed by—

- (1) any Native Indian subject of Her Majesty in any place without and beyond British India;†
- (2) any other British subject within the territories of any Native Prince or Chief in India;†
- (3) any servant of the Queen, whether a British subject or not, within the territories of any Native Prince or Chief in India.†

Explanation.—In this section the word ‘offence’ includes every act committed outside British India† which, if committed in British India,† would be punishable under this Code.

Illustrations.

(a) *A*, a coolie, who is a Native Indian subject, commits a murder in Uganda. He can be tried and convicted of murder in any place in British India in which he may be found.

(b) *B*, a European British subject, commits a murder in Kashmir. He can be tried and convicted of murder in any place in British India in which he may be found.

(c) *C*, a foreigner who is in the service of the Punjab Government, commits a murder in Jhind. He can be tried and convicted of murder at any place in British India in which he may be found.

(d) *D*, a British subject living in Indore, instigates *E* to commit a murder in Bombay: *D* is guilty of abetting murder.

* S. 4 has been substituted for the original by the Indian Penal Code Amendment Act (IV. of 1898), s. 2.

† For definitions of “British India” and “India,” see the General Clauses Act (X. of 1897), s. 3 (7), (27).

5. Nothing in this Act is intended to repeal, vary, suspend, or affect any of the provisions of the Statute 3 and 4, William IV., Chapter 85,* or of any Act of Parliament passed after that Statute, in anywise affecting the East India Company, or the said territories or the inhabitants thereof; or any of the provisions of any Act† for punishing mutiny and desertion of officers and soldiers in the service of Her Majesty, . . . ‡ or of any special or local law.§

CHAPTER II.

GENERAL EXPLANATIONS.

6. Throughout this Code, every definition of an offence, every penal provision, and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the Chapter|| entitled "General Exceptions," though those exceptions are not repeated in such definition, penal provision, or illustration.

Illustrations.

(a.) The sections in this Code which contain definitions of offences do not express that a child under seven years of age

* This Statute may now be cited as the Government of India Act, 1833.—See the Short Titles Act, 1896 (Stat. 59 & 60 Vict., c. 14).

† See now the Army Act (Stat. 44 & 45 Vict., c. 58) as continued and amended by subsequent annual Army Acts.

‡ In s. 5, the words, "or of the East India Company, or of any Act for the Government of the East India Company," repealed by the Repealing Act (XIV of 1870), have here been omitted.

§ A similar saving as to special and local laws was enacted in the Indian Penal Code Amendment Act (XXVII. of 1870). The amendments made by that Act have been embodied in this edition of the Penal Code.

|| See Ch. IV., *infra*.

cannot commit such offences; but the definitions are to be understood subject to the general exception* which provides that nothing shall be an offence which is done by a child under seven years of age.

(b.) *A*, a police-officer, without warrant, apprehends *Z*, who has committed murder: Here *A* is not guilty of the offence of wrongful confinement, for he was bound by law to apprehend *Z*, and therefore the case falls within the general exception† which provides that "nothing is an offence which is done by a person who is bound by law to do it."

7. Every expression which is explained in any part of this Code is used in every part of this Code in conformity with the explanation.

Sense of expression once explained.	
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8. The pronoun "he" and its derivatives are used of any person, whether male or female.

Gender.	
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9. Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

Number.	
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10. The word "man" denotes a male human being of any age: the word "woman" denotes a female human being of any age.

"Man." "Woman."	
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11. The word "person" includes any company or association, or body of persons, whether incorporated or not.

"Person."	
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12. The word "public" includes any class of the public or any community.

"Public."	
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13. The word "Queen" denotes the Sovereign for the time being of the United Kingdom of Great Britain and Ireland.

"Queen."	
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* In s. 82, *infra*.

† In s. 76, *infra*.

14. The words "servants of the Queen" denote all "Servants of the officers or servants continued, appointed, or employed in India by or under the authority of the said Statute 21 and 22 Victoria, Chapter 106,* entitled "An Act for the better Government of India," or by or under the authority of the Government of India or any Government.

15. The words "British India" denote the territories which are or may become vested in Her Majesty by the said Statute 21 and 22 Victoria, Chapter 106,* entitled "An Act for the Better Government of India." †

16. The words "Government of India" denote the "Government of Governor-General of India in Council, India," or, during the absence of the Governor-General of India, from his Council, the President in Council, or the Governor-General of India alone, as regards the powers which may be lawfully exercised by them or him, respectively.

17. The word "Government"‡ denotes the person or persons authorized by law to administer executive government in any part of British India.

18. The word "Presidency" denotes the territories subject to the Government of a Presidency.

19. The word "Judge" denotes, not only every person who is officially designated as a Judge, but also every person—

* This Statute may now be cited as "The Government of India Act, 1858."—See the Short Titles Act, 1896 (Stat. 59 & 60 Vict., c. 14).

† In s. 15 the words, "except the Settlement of the Prince of Wales's Island, Singapore, and Malacca," repealed by the Repealing and Amending Act (XII. of 1891), have here been omitted.

‡ But see s. 263A (4), *infra*.

GENERAL EXPLANATIONS.

who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or

who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

Illustrations.

(a) A Collector exercising jurisdiction in a suit under Act X. of 1859* is a Judge.

(b) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge.

(c) A member of a panchayat, which has power, under Regulation VII, 1816† of the Madras Code, to try and determine suits is a Judge.

* Act X. of 1859 (an Act to amend the Law relating to the Recovery of Rent in the Presidency of Fort William in Bengal) has been repealed in the Chutia Nagpur Division of Bengal (except as to the District of Manbhum and the Tributary Mehals) by the Chutia Nagpur Landlord and Tenant Procedure Act (Ben. Act I. of 1870) and in the rest of Bengal (except as to Calcutta, Orissa, and the Scheduled Districts) by the Bengal Tenancy Act (VIII. of 1855). It is now in force in the District of Manbhum, in the Darjeeling District and in parts of the Jalpaiguri District in Bengal; and such part of it as are not inconsistent with the portions of Act VIII. of 1855 which have been extended to the Orissa Division are in force in that division.

Act X. of 1859 has also been repealed in the North-Western Provinces (except as to certain Scheduled Districts) by the N.-W. P. Rent Act (XVIII. of 1874) and in the Central Provinces, by the Central Provinces Tenancy Act (IX. of 1883) which has been superseded by the Central Provinces Tenancy Act (XI. of 1898).

In the North-Western Provinces, for "Act X. of 1859," the words and figures "the North Western Provinces Tenancy Act, 1901," have been substituted.—See the N.-W. P. Tenancy Act (II. of 1901).

† Mad. Reg. VII. of 1816 has been repealed by the Madras Civil Courts Act (III. of 1873).

(d.) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court is not a Judge.

20. The words "Court of Justice" denote a Judge
 "Court of Justice." who is empowered by law to act
 judicially alone, or a body of Judges
 which is empowered by law to act judicially as a body,
 when such Judge or body of Judges is acting judicially.

Illustration.

A panchayat acting under Regulation VII., 1816,† of the Madras Code, having power to try and determine suits, is a Court of Justice.

21. The words "public servant"* denote a person
 "Public servant." falling under any of the descriptions
 hereinafter following namely:—

First—Every covenanted servant of the Queen :

Second.—Every commissioned officer in the military or naval force of the Queen while serving under the Government of India or any Government :

Third.—Every Judge :

Fourth.—Every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties :

Fifth.—Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant :

* Later Acts and Regulations declare various other functionaries to be public servants for the purposes of the Penal Code, e.g., Examiner of the University of Allahabad, by s. 18 (1) of the Allahabad University Act (XVIII. of 1887).

Sixth.—Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority :

Seventh.—Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement :

Eighth.—Every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety, or convenience :

Ninth.—Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property on behalf of Government, or to make any survey, assessment, or contract on behalf of Government, or to execute any revenue-process, or to investigate, or to report on any matter affecting the pecuniary interests of Government, or to make, authenticate, or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government, or remunerated by fees or commission for the performance of any public duty :

Tenth.—Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property, to make any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town, or district, or to make, authenticate, or keep any document for the ascertaining of the rights of the people of any village, town, or district.

Illustration.

A Municipal Commissioner is a public servant.

Explanation 1.—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2.—Wherever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

22. The words “moveable property” are intended to include corporeal property of every description except land and things attached to the earth, or permanently fastened to anything which is attached to the earth.

23. “Wrongful gain” is gain by unlawful means of property to which the person gaining it is not legally entitled.

“Wrongful loss.” is the loss by unlawful means of property to which the person losing it is legally entitled

A person is said to gain wrongfully when such person retains wrongfully, as well as Gaining wrongfully; when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongtully deprived of property.

24. Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing “dishonestly.”

25. A person is said to do a thing “fraudulently” if he does that thing with intent to defraud, but not otherwise.

Intent to defraud.—Whenever the words “fraud” or “intent to defraud” occur in the definition of a crime, two elements at least are essential to the commission of the crime, namely first, deceit or an intention to deceive, or, in some case, mere secrecy; and secondly, either actual injury or possible injury, or an intent to expose some person either to actual injury or to a risk of possible injury by means of that deceit or secrecy.—21 All. 113.

26. A person is said to have "reason to believe" a thing if he has sufficient cause to believe that thing, but not otherwise.
 "Reason to believe."

27. When property is in the possession of a person's wife, clerk, or servant on account of that person, it is in that person's position within the meaning of this Code.
 "Property in possession of wife, clerk, or servant."

Explanation.—A person employed temporarily, or on a particular occasion, in the capacity of a clerk or servant, is a clerk or servant within the meaning of this section.

23. A person is said to "counterfeit" who causes one thing to resemble another thing, intending, by means of that resemblance, to practise deception, or knowing it to be likely that deception will thereby be practised.
 "Counterfeit."

*Explanation 1.**—It is not essential to counterfeiting that the imitation should be exact.

*Explanation 2.**—When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended, by means of that resemblance, to practise deception, or knew it to be likely that deception would thereby be practised.

29. The word "document" denotes any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.
 "Document."

* These two explanations have been substituted for the original by the Metal Tokens Act (I. of 1889), s. 9.

Explanation 1.—It is immaterial by what means, or upon what substance, the letters, figures, or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice or not.

Illustrations.

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A cheque upon a banker is a document.

A power-of-attorney is a document.

A map or plan which is intended to be used, or which may be used, as evidence, is a document.

A writing containing directions or instructions is a document.

Explanation 2.—Whatever is expressed by means of letters, figures, or marks, as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures, or marks within the meaning of this section, although the same may not be actually expressed.

Illustration.

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words "pay to the holder," or words to that effect, had been written over the signature.

30. The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished, or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

Illustration.

A writes his name on the back of a bill of exchange: As the effect of this endorsement is to transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a "valuable security."

"A will."

31. The words "a will" denote any testamentary document.

32. In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

33. The word "act" denotes as well a series of acts as a single act; the word "omission" denotes as well a series of omissions as a single omission.

34* When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

Principle.—"Every man is responsible criminally for what, if wrong, flows directly from his corrupt intention, but no man intending wrong is responsible for an independent act of wrong committed by another. If one person sets in motion the physical power of another person, the former is criminally guilty for its results."

35. Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

36. Whenever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of

* S. 34 has been substituted for the original by the Indian Penal Code Amendment Act (XXVII. of 1870), s. 1.

that effect, partly by an act, and partly by an omission, is the same offence.

Illustration.

A intentionally causes *Z*'s death, partly by illegally omitting to give *Z* food, and partly by beating *Z*: *A* has committed murder.

37. When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly, or jointly with any other person, commits that offence.

Comment.—We have seen that if several persons combine both in intent and act, each is answerable for the joint criminal act just as if he alone had done it, and so it is if each person has his several parts to do, the whole contributing to one result. It is immaterial what particular share is allotted to each or whether the object be accomplished jointly by all present at the same time and place, or each performs his own part separately. Where all concur in effecting the criminal result, each does the act so far as his own part extends, and, as to the residue, may be regarded as causing it to be done by means of a guilty agent. All the persons concerned stand in the mutual relation of principal and agent.—*Morgan and Macpherson.*

Illustrations.

(a.) *A* and *B* agree to murder *Z* by severally, and at different times, giving him small doses of poison. *A* and *B* administer the poison according to the agreement with intent to murder *Z*. *Z* dies from the effects of the several doses of poison so administered to him. Here *A* and *B* intentionally co-operate in the commission of murder, and as each of them does an act by which the death is caused, they are both guilty of the offence, though their acts are separate.

(b.) *A* and *B* are joint jailors, and, as such, have the charge of *Z*, a prisoner alternately for six hours at a time. *A* and *B*, intending to cause *Z*'s death, knowingly co-operate in causing that effect by illegally omitting each during the time of his attendance, to furnish *Z* with food supplied to them for that purpose. *Z* dies of hunger: Both *A* and *B* are guilty of the murder of *Z*.

(c.) *A*, a jailor, has the charge of *Z*, a prisoner. *A*, intending to cause *Z*'s death, illegally omits to supply *Z* with food, in consequence of which *Z* is much reduced in strength, but the starvation is not sufficient to cause his death. *A* is dismissed from his office, and *B* succeeds him. *B*, without collusion or co-operation with *A*, illegally omits to supply *Z* with food, knowing that he is likely thereby to cause *Z*'s death. *Z* dies of hunger: *B* is guilty of murder, but, as *A* did not co-operate with *B*, *A* is guilty only of an attempt to commit murder.

Persons concerned in criminal act may be guilty of different offences.

38. Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

Comment.—If several persons, having one and the same criminal intention or knowledge, jointly commit murder or an assault, each is liable for the offence as if he had acted alone; but, if several persons join in an act each having a different intention or knowledge from the others each is liable according to his own criminal intention or knowledge and he is not liable further.—*Morgan and Macpherson.*

Illustration

A attacks *Z* under such circumstances of grave provocation that his killing of *Z* would be only culpable homicide not amounting to murder. *B*, having ill will towards *Z*, and intending to kill him, and not having been subject to the provocation, assists *A* in killing *Z*: Here, though *A* and *B* are both engaged in causing *Z*'s death *B* is guilty of murder, and *A* is guilty only of culpable homicide.

39. A person is said to cause an effect "voluntarily" when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

Comment.—If the effect is a probable consequence of the means used by a person, he causes it "voluntarily," whether he really meant it or not. He is not allowed to urge that he did not know, and was not sure, that the consequence would follow; but he must answer for it just as if he had intended to cause it.—*Morgan and Macpherson.*

Illustration.

A sets fire by night to an inhabited house in a large town for the purpose of facilitating a robbery and thus causes death of a person : Here A may not have intended to cause death, and may even be sorry that death has been caused by his act ; yet, if he knew that he was likely to cause death, he has caused death voluntarily.

40.* Except in the chapter and sections mentioned
 “Offence.” in clauses two and three of this section, the word “offence” denotes a thing made punishable by this Code.

In Chapter IV., “Chapter VA.,”† and in the following sections, namely, sections 64, 65, 66, 67, 71, 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389, and 445, the word “offence” denotes a thing punishable under this Code, or under any special or local law as hereinafter‡ defined ;

and in sections 141, 176, 177, 201, 202, 212, 216, and 441, the word “offence” has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.

Comment.—It does not extend to acts punishable under the Laws of England.

“Special law.” **41.** A “special law” is a law applicable to a particular subject.

* S. 40 has been substituted for the original by the Indian Penal Code Amendment Act (XXVII. of 1870), s. 2. The figures, 64, 65, 66, and 71 in the second clause of s. 40, have been inserted by the Indian Penal Code Amendment Act (VIII. of 1882), s. 1 ; and the figures ‘67’ by the Indian Criminal Law Amendment Act (X. of 1886), s. 21 (1).

† Word, figure and letter within quotations inserted by Act VIII. of 1913.

‡ In ss. 41 and 42.

- 42.** A "local law" is a law applicable only to a particular part of British India.
- "Local law."

Comment.—The laws of a Presidency, or of a Lieutenant-Governorship, or of a Province, as the laws of the Presidency of Fort St-George, of the Punjab, of Oudh, etc., are not local laws. The laws administered by the Supreme Courts to British subjects and others are not special or local laws.—*Morgan and Macpherson*. But laws applicable to particular localities are termed local laws, e.g. Port Trust Acts.—*Ratanlal*.

- 43.** The word "illegal" is applicable to everything which is an offence, or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be "legally bound to do" whatever it is illegal in him to omit.
- "Illegal;"
- "Legally bound to do."

- 44.** The word "injury" denotes any harm whatever illegally caused to any person in body, mind, reputation, or property.
- "Injury."

Comment.—Injury is an act contrary to law *i.e.*, which affects a person prejudicially in some legal right.

- 45.** The word "life" denotes the life of a human being unless the contrary appears from the context.
- "Life."

- 46.** The word "death" denotes the death of a human being unless the contrary appears from the context.
- "Death."

- 47.** The word "animal" denotes any living creature other than a human being.
- "Animal."

- 48.** The word "vessel" denotes anything made for the conveyance by water of human beings or of property.
- "Vessel."

- 49.** Wherever the word "year" or the word "month" is used, it is to be understood that the year or the month is to be reckoned according to the British calendar.
- "Year;" "Month."

50. The word "section" denotes one of those portions of a chapter of this Code which are distinguished by prefixed numeral figures.

51. The word "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorized by law to be made before a public servant, or to be used for the purpose of proof, whether in a Court of Justice or not.

52. Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention.

Comment.—The definition of "good faith" given here is merely a negative one. This explanation of good faith shows in what sense the above and other similar clauses are to be understood. Mere good faith in the sense of simple belief,—actual belief, without any grounds for believing, is not sufficient: the belief must be reasonable, not an absurd belief, that is, there must be some reasonable ground for it. Good faith in act or belief requires due care and attention to the matter in hand. The law cannot mark, except in this vague way, the amount of care and attention requisite, but, if a man takes upon himself an office or duty requiring skill or care, and a question arises whether he has acted therein in good faith, he must show, not merely a good intention, but such care and skill as the duty reasonably demands for its due discharge.—*Morgan and Macpherson.*

CHAPTER III.

OF PUNISHMENTS.

53. The punishments to which offenders are liable under the provisions of this Code are—

first—death;

secondly—transportation;

thirdly—penal servitude;

fourthly—imprisonment,* which is of two descriptions, namely—

(1) rigorous, that is. with hard labour ;

(2) simple ;

fifthly—forfeiture of property ;

sixthly—fine.†

Comment—Whipping may be the punishment for certain offences.

54. In every case in which sentence of death shall have been passed, the Government of India or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

55. In every case in which sentence of transportation for life shall have been passed, the Government of India or the Government of the place within which the

* This definition of "imprisonment" applies in the case of all Acts of the Governor General in Council made after the 3rd January 1808, and of all Regulations made under the Government of India Act, 1870 (Stat. 33 Vict., c. 3), after the 14th January 1887.—*See* the General Clauses Act (X. of 1897), ss. 3 (20) and 4 (1) and (2).

† For power to pass sentence of fine in a case referred to a Council of Elders in a Punjab Frontier District or in Baluchistan, *see* the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

As to punishment of whipping generally, *see* now the Whipping Act (IV. of 1909) ; in Upper Burma, *see* the Burma Laws Act (XIII. of 1898), s. 3 (b) and Sch. III. ; and, in the Punjab Frontier Districts and Baluchistan, *see* the Punjab Frontier Crimes Regulation (IV. of 1887), ss. 8, 14 (2).

offender shall have been sentenced may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

56. Whenever any person, being a European or American, is convicted of an offence punishable under this Code with transportation, the Court shall sentence the offender to penal servitude, instead of transportation, according to the provisions of Act XXIV. of 1855 :
 Sentence of Europeans and Americans to penal servitude.

* Provided that, where a European or American offender would, but for such Act, be liable to be sentenced or ordered to be transported for a term exceeding ten years, but not for life, he shall be liable to be sentenced or ordered to be kept in penal servitude for such term exceeding six years as to the Court seems fit, but not for life.
 Proviso as to sentence for term exceeding ten years, but not for life.

57. In calculating fractions of terms of punishment, transportation for life shall be reckoned as equivalent to transportation for twenty years.
 Fractions of terms of punishment.

Comment.—For calculating fractions of terms of punishment this section provides that transportation for life shall mean transportation for twenty years. But transportation for life also means transportation for twenty years, for the purpose of duration of punishment. So in every case a convict is at liberty to come back after a lapse of twenty years, even if he be punished with a sentence of transportation for life.

* This proviso has been added by the Indian Penal Code Amendment Act (XXVII. of 1870), s. 3.

53. In every case in which a sentence of transportation is passed, the offender, until he is transported, shall be dealt with in the same manner as if sentenced to rigorous imprisonment, and shall be held to have been undergoing his sentence of transportation during the term of his imprisonment.

Offenders sentenced to transportation how dealt with until transported.

59. In every case in which an offender is punishable with imprisonment for a term of seven years or upwards, it shall be competent to the Court which sentences such offender, instead of awarding sentence of imprisonment, to sentence the offender to transportation for a term not less than seven years, and not exceeding the term for which, by this Code, such offender is liable to imprisonment.

Transportation instead of imprisonment.

60.* In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple.

61. In every case in which a person is convicted of an offence for which he is liable to forfeiture of all his property, the offender shall be incapable of acquiring any property, except for the benefit of Government, until he shall have undergone the punishment awarded or the punishment to which it shall have been commuted, or until he shall have been pardoned.

Sentence of forfeiture of property.

* As to the application of s. 60 and ss. 63 to 74 to sentences passed in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), ss. 15 (2), 52.

Illustration.

FM A, being convicted of waging war against the Government of India, is liable to forfeiture of all his property. After the sentence, and whilst the same is in force, *A's* father dies, leaving an estate which, but for the forfeiture would become the property of *A*: The estate becomes the property of Government.

62. Whenever any person is convicted of an offence punishable with death, the Court may adjudge that all his property, moveable and immoveable, shall be forfeited to Government; and whenever any person shall be convicted of any offence for which he shall be transported or sentenced to imprisonment for a term of seven years or upwards, the Court may adjudge that the rents and profits of all his moveable and immoveable estate, during the period of his transportation or imprisonment, shall be forfeited to Government, subject to such provision for his family and dependants as the Government may think fit to allow during such period.

Scope.—S. 62 of the Penal Code, which provides for forfeitures, limits them to cases where the parties shall have been transported, or sentenced to imprisonment for at least seven years 8 W. R. 35.

63.* Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

Unlimited.—Only the Court of Session or the High Court can inflict fines to an unlimited extent—7 W. R. 37.

* The provisions of s. 63 apply to all fines imposed under the authority of any Act, Regulation, rule, or bye-law, unless the Act, Regulation, rule, or bye-law contains an express provision to the contrary.—See the General Clauses Act (X. of 1897), s. 25.

As to the application of s. 63 to sentences passed in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), ss. 15 (2), 52.

64.* "In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment ;

Sentence of imprisonment for non-payment of fine.

"and in every case of an offence punishable *with imprisonment or fine*, or with fine only, in which the offender is sentenced to a fine ;"

it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced, or to which he may be liable under a commutation of a sentence.

Comment.—The wording of the section is not happy but the Legislature intended by it to provide for the award of imprisonment in default of payment of fine in all cases in which fine can be imposed.

* The provisions of s. 64 apply to all fines imposed under the authority of any Act, Regulation, rule, or bye-law, unless the Act, Regulation, rule, or bye-law contains an express provision to the contrary.—See the General Clauses Act (X. of 1897), s. 25.

As to the application of s. 64 to sentences passed in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), ss. 15 (2), 52.

As to the application of s. 64 to offences under special or local laws, see s. 40, *supra*.

In s. 64, the first two clauses quoted (except the words italicized) have been substituted by the Indian Penal Code Amendment Act (VIII. of 1882), s. 2, for the words, "In every case in which an offender is sentenced to fine." They do not apply in the case of hill-tribes to which the Kachin Hill-tribes Regulation (I. of 1895) is applied.—See ss. 1 (3) and 3 of that Regulation.

In s. 64, the words italicized have been inserted by the Indian Criminal Law Amendment Act (X. of 1886), s. 21 (2).

65.* The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence if the offence be punishable with imprisonment as well as fine.

Limit to imprisonment for non-payment of fine when imprisonment and fine awardable.

66.* The imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.

Description of imprisonment for non-payment of fine.

67.* If the offence be punishable with fine only, "the imprisonment which the Court imposes in default of payment of the fine shall be simple, and" the term for which the Court directs the offender to be imprisoned shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence if the offence be punishable with imprisonment as well as fine.

Imprisonment for non-payment of fine when offence punishable with fine only.

* The provisions of ss. 65 to 67 apply to all fines imposed under the authority of any Act, Regulation, rule, or bye-law, unless the Act, Regulation, rule, or bye-law contains an express provision to the contrary.—*See the General Clauses Act (X. of 1897), s. 25.*

As to the application of ss. 65 to 67 to sentences passed in a Punjab Frontier District or in Baluchistan, *see the Punjab Frontier Crimes Regulation (IV. of 1887), ss. 15 (2), 52.*

As to the application of ss. 65 to 67 to offences under special or local laws, *see s. 40, supra.*

In s. 67 the words quoted have been inserted by the Indian Penal Code Amendment Act (VIII. of 1883), s. 3.

In the case of hill-tribes to which the Kachin Hill-tribes Regulations (I. of 1895) is applied, the following words have been substituted for the portion italicized in s. 67 :—

"For any term not exceeding four months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding eight months when the amount shall not exceed one hundred rupees, and for any term not exceeding twelve months in any other case."—*See the Kachin Hill-tribes Regulation (I. of 1895), ss. 1 (3) and 3.*

This substitution is also made in the case of the hill-tribes to which the Chin Hills Regulation (V. of 1896) is applied.—*See Regulation V. of 1896, s. 3 and Schedule.*

der to be imprisoned in default of payment of fine shall not exceed the following scale, that is to say, *for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case.*

Scope.—This section refers only to cases in which the offence is punishable with fine only and has no application to offences punishable either with imprisonment or with fine, but not with both. Such sentences are governed by s. 65.

68.* The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

69.* If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

Illustration.

A is sentenced to a fine of one hundred rupees, and to four months' imprisonment in default of payment: Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are

* The provisions of ss. 68 and 69 apply to all fines imposed under the authority of any Act, Regulation, rule, or bye-law unless the Act, Regulation, rule, or bye-law contains an express provision to the contrary.—See the General Clauses Act (X. of 1897), s. 25.

As to the application of ss. 68 and 69 to sentences passed in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), ss. 15 (2), 52.

completed. If fifty rupees be paid or levied at the time of the expiration of those two months, or at any later time while *A* continues in imprisonment, *A* will be immediately discharged.

70.* The fine or any part thereof which remains unpaid may be levied at any time within six years after the passing of the sentence, and, if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period; and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

Fine leviable within six years, or during imprisonment.

Death not to discharge property from liability.

Comment.—Where a person has undergone imprisonment in default of payment of fine, he is not thereby exonerated from paying the fine.

71.† Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of

Limit of punishment of offence made up of several offences.

* The provisions of s. 70 apply to all fines imposed under the authority of any Act, Regulation, rule, or bye-law unless the Act, Regulation, rule, or bye-law contains an express provision to the contrary—*See the General Clauses Act (X. of 1897, s. 25.*

As to the application of s. 70 to sentences passed in a Punjab Frontier District or in Baluchistan, *see the Punjab Frontier Crimes Regulation (IV. of 1867), ss. 15 (2), 52.*

† In s. 71, the clauses quoted have been added by the Indian Penal Code Amendment Act (VIII. of 1882), s. 4.

As to the application of s. 71 to offences under special or local laws, *see s. 40, supra.*

Separable offences which come within the provisions of s. 71, are not "distinct offences" within the meaning of s. 35 of the Code of Criminal Procedure (Act V. of 1893).

As to the application of ss. 70 and 71 to sentences passed in a Punjab Frontier District or in Baluchistan, *see the Punjab Frontier Crimes Regulation (IV. of 1867), ss. 15 (2), 52.*

more than one of such his offences unless it be so expressly provided.

“Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

“where several acts, of which one or more than one would, by itself or themselves, constitute an offence, constitute, when combined, a different offence,

“the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.”

Illustrations.

(a.) *A* gives *Z* fifty strokes with a stick: Here *A* may have committed the offence of voluntarily causing hurt to *Z* by the whole beating, and also by each of the blows which make up the whole beating. If *A* were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(b.) But, if, while *A* is beating *Z*, *Y* interferes, and *A* intentionally strikes *Y*, here, as the blow given to *Y* is no part of the act whereby *A* voluntarily causes hurt to *Z*, *A* is liable to one punishment for voluntarily causing hurt to *Z*, and another for the blow given to *Y*.

72.* In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of those offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided if the same punishment is not provided for all.

* As to the application of s 72 to sentences passed in a Punjab Frontier District or in Baluchistan see the Punjab Frontier Crimes Regulation (IV. of 1887), ss. 15 (2), 52.

73* Whenever any person is convicted of an offence for which, under this Code, the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say—

a time not exceeding one month if the term of imprisonment shall not exceed six months ;

a time not exceeding two months if the term of imprisonment shall exceed six months, and " shall not exceed one "† year ;

a time not exceeding three months if the term of imprisonment shall exceed one year.

74.* In executing a sentence of solitary confinement, such confinement shall, in no case, exceed fourteen days at a time with intervals between the periods of solitary confinement of not less duration than such periods; and, when the imprisonment awarded shall exceed three months, the solitary confinement awarded shall not exceed seven days, in any one month, of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

Enhanced punishment for certain offences under Ch. XII. or Ch. XVII. after previous conviction.

75‡ Whoever, having been convicted,—

* As to the application of ss. 73 and 74 to sentences passed in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887) ss 15 (2), 52.

† In s. 73, the words quoted have been substituted by the Indian Penal Code Amendment Act (VII. of 1882), s. 5, for the words " be less than a."

‡ S. 75 has been substituted for the original s. 75 by Act III. of 1910.

- (a) by a Court in British India, of an offence punishable under Chapter XII. or Chapter XVII. of this Code, with imprisonment of either description for a term of three years or upwards, or,
- (b) by a Court or tribunal in the territories of any Native Prince or State in India acting under the general or special authority of the Governor-General in Council, or of any Local Government, of an offence which would, if committed in British India, have been punishable, under those Chapters of this Code, with like imprisonment for the like term,

shall be guilty of any offence punishable, under either of those Chapters, with like imprisonment for the like term, shall be subject, for every such subsequent offence, to transportation for life, or to imprisonment of either description for a term which may extend to ten years.

In its application to hill tribes to which the Kachin Hill-tribes Regulation (I. of 1895) is applied [see ss. 1 (3) and 3, of that Regulation], the Code is to be read as if the following additional section were inserted after s. 75 :—

“75A. Notwithstanding anything in this Code, or in any other enactment for the time being in force, a person convicted of any offence punishable under this Code, or under any other enactment, shall be punishable with fine in lieu of, or in addition to, any other punishment to which he may be liable.

In the Chin Hills, the Code is to be read as if a section similar to the preceding, save a few verbal differences and similarly numbered, were inserted.—See the Chin Hills Regulation (V. of 1896).

CHAPTER IV.*

GENERAL EXCEPTIONS.

76. Nothing is an offence which is done by a person who is, or who, by reason of a mistake of fact, and not by reason of a mistake of law, in good faith believes himself to be bound by law to do it.

Act done by a person bound, or by mistake of fact believing himself bound, by law.

Scope.—This and the following three sections leave untouched the liability in a civil suit of the person who claims their benefit.

Illustrations.

(a.) A, a soldier, fires on a mob by the order of his superior officer in conformity with the commands of the law; A has committed no offence

(b.) A, an officer of a Court of Justice, being ordered by the Court to arrest Y, and after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

77. Nothing is an offence which is done by a Judge when acting judicially, of any power which is, or which in good faith he believes to be, given to him by law.

78. Nothing which is done in pursuance of, or which is warranted by, the judgment or order of a Court of Justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

* Ch. IV. applies to offences punishable under ss. 121A, 124A, 225A, 225B, 294A and 304A.—See the Indian Penal Code Amendment Act (XXVII. of 1870), s. 13, as amended by the Repealing and Amending Act (XII. of 1891). As to the application of Chapter IV. to offences under special or local laws, see s. 40 *supra*.

79. Nothing is an offence which is done by any person who is justified by law, or who, by reason of a mistake of fact, and not by reason of a mistake of law, in good faith believes himself to be justified by law, in doing it.

Act done by a person justified, or by mistake of fact believing himself justified, by law.

Illustration.

A sees Z commit what appears to A to be a murder. A, in the exercise to the best of his judgment exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the act, seizes Z in order to bring Z before the proper authorities: A has committed no offence though, it may turn out that Z was acting in self-defence.

80. Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge, in the doing of a lawful act in a lawful manner by lawful means, and with proper care and caution.

Accident in doing a lawful act.

Illustration.

A is at work with a hatchet. the head flies off and kills a man who is standing by: Here, if there was no want of proper caution on the part of A, his act is excusable, and not an offence.

81. Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

Act likely to cause harm, but done without criminal intent, and to prevent other harm.

Explanation.—It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature, and so imminent, as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

Illustrations.

(a.) *A*, the captain of a steam-vessel, suddenly, and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat, *B*, with 20 or 30 passengers on board, unless he changes the course of his vessel; and that, by changing his course, he must incur risk of running down a boat, *C*, with only two passengers on board, which he may possibly clear: Here, if *A* alters his course without any intention to run down the boat *C*, and in good faith for the purpose of avoiding the danger to the passengers in the boat *B*, he is not guilty of an offence, though he may run down the boat *C* by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down *C*.

(b) *A*, in a great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the intention, in good faith, of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse *A*'s act, *A* is not guilty of the offence.

Act of a child under seven years of age.

82. Nothing is an offence* which is done by a child under seven years of age.

83. Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

84. Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

* See, however, the Indian Railways Act (IX. of 1890), s. 130, as to offences committed by children against certain provisions of that Act.

85. Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law, provided that the thing which intoxicated him was administered to him without his knowledge, or against his will.

86. In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated unless the thing which intoxicated him was administered to him without his knowledge, or against his will.

87.* Nothing which is not intended to cause death or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person above eighteen years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

Illustration.

A and Z agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which, in the course of such fencing, may be caused without foul play; and if A, while playing, fairly hurts Z, A commits no offence.

88.* Nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by

Act not intended to cause death done by consent in good faith for person's benefit.

* For exceptions to ss. 87, 88, see s. 91, *infra*.

the doer to be likely to cause, to any person for whose benefit* it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

Illustration.

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death, and intending, in good faith, Z's benefit, performs that operation on Z with Z's consent: A has committed no offence.

89.† Nothing which is done in good faith for the benefit* of a person under twelve years of age, or of unsound mind, by, or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person:

PROVISOS.

Provided—

firstly, that this exception shall not extend to the intentional causing of death, or to the attempting to cause death:

secondly, that this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity:

thirdly, that this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity:

* Pecuniary benefit is not "benefit" within the meaning of these sections—See s. 92 (*Expl*), *infra*.

† For exceptions to s. 89, see s. 91, *infra*.

fourthly, that this exception shall not extend to the abetment of any offence to the committing of which offence it would not extend.

Illustration.

A, in good faith, for his child's benefit, without his child's consent, has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death : A is within the exception, inasmuch as his object was the cure of the child.

90. A consent is not such a consent as is intended by any section of this Code if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception ; or

if the consent is given by a person who, from unsoundness of mind or intoxication, is unable to understand the nature and consequence of that to which he gives his consent ; or,

unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

91. The exceptions in sections 87, 88, and 89 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Illustration.

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause, or be intended to cause, to the woman. Therefore it is not an offence "by reason of such harm," and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

92. Nothing is an offence by reason of any harm which it may cause to a person for Act done in good faith for benefit of a person without consent. **92.** Nothing is an offence by reason of any harm which it may cause to a person for whose benefit* it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit :

Provisos.

Provided—

first, that this exception shall not extend to the intentional causing of death, or the attempting to cause death :

secondly, that this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity :

thirdly, that this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt :

fourthly, that this exception shall not extend to the abetment of any offence to the committing of which offence it would not extend.

Illustrations.

(a.) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good faith, for Z's benefit performs the trepan before Z recovers his power of judging for himself: A has committed no offence.

* Pecuniary benefit is not "benefit" within the meaning of this section.—See *Expl.* to this section, *infra*.

(b.) *Z* is carried off by a tiger. *A* fires at the tiger, knowing it to be likely that the shot may kill *Z*, but not intending to kill *Z*, and in good faith intending *Z*'s benefit. *A*'s ball gives *Z* a mortal wound; *A* has committed no offence.

(c.) *A*, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is not time to apply to the child's guardian. *A* performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit: *A* has committed no offence.

(d.) *A* is in a house which is on fire with *Z* a child. People below hold out a blanket. *A* drops the child from the house-top, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit: Here, even if the child is killed by the fall, *A* has committed no offence.

Explanation.—Mere pecuniary benefit is not benefit within the meaning of sections 88, 89, and 92.

93. No communication made in good faith is an offence by reason of any harm to the person to whom it is made if it is made for the benefit of that person.

Illustration.

A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. *A* has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

94. Except murder and offences against the State, punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence: provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation 1.—A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception on the ground of his having been compelled by his associates to do anything that is an offence by law.

Explanation 2.—A person seized by a gang of dacoits, and forced, by threat of instant death, to do a thing which is an offence by law, for example, a smith compelled to take his tools, and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

95. Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

Object.—The Law Commissioners, in framing the above section state: ‘ This section is intended to provide for those cases which, though, from the imperfections of language, they fall within the letter of the law, are yet not within its spirit, and are all over the world considered by the public, and, for the most part dealt with by the tribunals, as innocent.’

Of the Right of Private Defence.

Things done in private defence.

96. Nothing is an offence which is done in the exercise of the right of private defence.

Right of private defence of the body, and of property.

97. Every person has a right, subject to the restrictions contained in section 99, to defend—

first—his own body and the body of any other person against any offence affecting the human body ;

secondly—the property, whether moveable or immoveable, of himself or of any other person, against any act

which is an offence falling under the definition of theft, robbery, mischief, or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

98. When an act, which would otherwise be a certain offence, is not that offence by reason of the youth, the want of maturity of understanding, the unsoundness of mind, or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

Right of private defence against the act of a person of unsound mind, &c.

Illustrations.

(a.) Z, under the influence of madness, attempts to kill A : Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(b) A enters by night a house which he is legally entitled to enter. Z in good faith, taking A for a house-breaker, attacks A : Here Z, by attacking A under this misconception commits no offence. But A has the same right of private defence against Z which he would have if Z were not acting under that misconception.

99. There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt if done or attempted to be done by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt if done or attempted to be done by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Extent to which the right may be exercised.

Explanation 1.—A person is not deprived of the right of private defence against an act done or attempted to be done by a public servant, as such, unless he knows or has reason to believe that the person doing the act is such public servant.

Explanation 2.—A person is not deprived of the right of private defence against an act done or attempted to be done by the direction of a public servant unless he knows or has reason to believe that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or, if he has authority in writing, unless he produces such authority if demanded.

100. The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death, or of any other harm, to the assailant if the offence which occasions the exercise of the right be of any of the descriptions, hereinafter enumerated, namely—

first—such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

secondly—such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

thirdly—an assault with the intention of committing rape;

fourthly—an assault with the intention of gratifying unnatural lust ;

fifthly—an assault with the intention of kidnapping or abducting ;

sixthly—an assault with the intention of wrongfully confining a person under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

101. If the offence be not of any of the descriptions

enumerated in the last-preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99, to the voluntary causing to the assailant of any harm other than death.

102. The right of private defence of the body com-

mences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed, and it continues as long as such apprehension of danger to the body continues.

103. The right of private defence of property extends,

under the restrictions mentioned in section 99, to the voluntary causing of death, or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely—

first—robbery :

secondly—house-breaking by night :

thirdly—mischief by fire committed on any building: tent, or vessel, which building, tent, or vessel is used as a human dwelling, or as a place for the custody of property :

fourthly—theft, mischief, or house-trespass under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence if such right of private defence is not exercised.

104. If the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

When such right extends to causing any harm other than death.

Commencement and continuance of the right of private defence of property.

105. The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

The right of private defence of property against theft continues till the offender has effected his retreat with the property, or either the assistance of the public authorities is obtained, or the property has been recovered.

The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint, or as long as the fear of instant death, or of instant hurt, or of instant personal restraint, continues.

The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

106. If, in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

Right of private defence against deadly assault when there is risk of harm to innocent person.

Comment.—A man must not escape death by designedly causing the death of an innocent person, but in the case supposed, he is excused for causing an innocent person to run the risk of death.—*Morgan and Macpherson.*

Illustration.

A is attacked by a mob who attempts to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob: A commits no offence if, by so firing, he harms any of the children.

CHAPTER V.*

OF ABETMENT.

107. A person abets the doing of a thing who—

first—instigates any person to do that thing; or,

* Ch. V. applies to offences punishable under ss. 121A, 124A, 225A, 225B, 294A, and 304A—See the Indian Penal Code Amendment Act (XXVII of 1870), s. 13, as amended by the Repealing and Amending Act (XII of 1891).

The definition of "abet" here given applies in the case of all Acts of the Governor-General in Council and Regulations under "the Government of India Act, 1870" (Stat. 33 Vict., c. 3) s. 1, made after the 14th January 1887.—See the General Clauses Act (X. of 1897), ss. 3 (1), 4 (2)

As to the application of ss. 109, 110, 112, and 114 to 117 to offences under special or local laws, see s. 40, *supra*.

The abetment of certain offences is compoundable.—See the Code of Criminal Procedure (Act V. of 1898), Sch. II.

secondly—engages, with one or more other person or persons, in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or,

thirdly—intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes, or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration.

A, a public officer, is authorized by a warrant from a Court of justice to apprehend *Z*. *B*, knowing that fact, and also that *C* is not *Z*, wilfully represents to *A* that *C* is *Z*, and thereby intentionally causes *A* to apprehend *C*: Here *B* abets by instigation the apprehension of *C*.

Explanation 2.—Whoever, either prior to, or at the time of, the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Comment.—Three kinds of abetments are described here: (1) abetment by instigation (2) abetment by conspiracy and (3) abetment by aid.

108. A person abets an offence who abets, either the commission of an offence, or the commission of an act which would be an offence if committed by a person capable by law of committing an offence, with the same intention or knowledge as that of the abettor.

Explanation 1.—The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2.—To constitute the offence of abetment, it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations.

(a.) *A* instigates *B* to murder *C*. *B* refuses to do so: *A* is guilty of abetting *B* to commit murder.

(b.) *A* instigates *B* to murder *D*. *B*, in pursuance of the instigation, stabs *D*. *D* recovers from the wound: *A* is guilty of instigating *B* to commit murder.

Explanation 3.—It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations.

(a.) *A*, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence if committed by a person capable by law of committing an offence, and having the same intention as *A*: Here *A*, whether the act be committed or not, is guilty of abetting an offence.

(b.) *A*, with the intention of murdering *Z*, instigates *B*, a child under seven years of age, to do an act which causes *Z*'s death. *B*, in consequence of the abetment, does the act in the absence of *A*, and thereby causes *Z*'s death: Here, though *B* was not capable by law of committing an offence, *A* is liable to be punished in the same manner as if *B* had been capable by law of committing an offence, and had committed murder, and he is, therefore, subject to the punishment of death.

(c.) *A* instigates *B* to set fire to a dwelling-house. *B*, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of *A*'s instigation: *B* has committed no offence, but *A* is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.

(d.) *A*, intending to cause a theft to be committed, instigates *B* to take property belonging to *Z* out of *Z*'s possession. *A* induces *B* to believe that the property belongs to *A*. *B* takes

the property out of *Z*'s possession, in good faith believing it to be *A*'s property: *B*, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But *A* is guilty of abetting theft, and is liable to the same punishment as if *B* had committed theft.

Explanation 4.—The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration.

A instigates *B* to instigate *C* to murder *Z*. *B* accordingly instigates *C* to murder *Z* and *C* commits that offence in consequence of *B*'s instigation: *B* is liable to be punished for his offence with the punishment for murder, and, as *A* instigates *B* to commit the offence, *A* is also liable to the same punishment.

Explanation 5.—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed.

Illustration.

A consents with *B* a plan for poisoning *Z*. It is agreed that *A* shall administer the poison. *B* then explains the plan to *C* mentioning that a third person is to administer the poison, but without mentioning *A*'s name. *C* agrees to procure the poison, and procures and delivers it to *B* for the purpose of its being used in the manner explained. *A* administers the poison. *Z* dies in consequence. Here, though *A* and *C* have not conspired together, yet *C* has been engaged in the conspiracy in pursuance of which *Z* has been murdered. *C* has, therefore, committed the offence defined in this section, and is liable to the punishment for murder.

108A* A person abets an offence within the meaning of this Code who, in British India, abets the commission of any act within or beyond British India which would constitute an offence if committed in British India.

* S. 108A has been added by the Indian Penal Code Amendment Act (IV, of 1898), s. 3. As to the authority for instituting prosecutions under s. 108A, see the Code of Criminal Procedure (Act V. of 1898), s. 196.

Illustration.

A, in British India, instigates *B*, a foreigner in Goa, to commit a murder in Goa: *A* is guilty of abetting murder.

109.* Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Punishment of abetment if the act abetted is committed in consequence, and where no express provision is made for its punishment.

Note to sec. 109—Court by which offence abetted is triable. Cog. if offence abetted cog. According as warrant or summons may issue for offence abetted. According as offence abetted is bailable or not.

Explanation.—An act or offence is said to be committed in consequence of abetment when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Comment.—This section only applies to those cases of abetment about which no express provision is made by this Code. Hence it does not apply to abetting the waging of war, ss. 121, 122, 123, to s. 130; to s. 132; to s. 134 or to s. 136.—*Ratanlal.*

According as offence abetted is compoundable or not.

Illustrations.

(a) *A* offers a bribe to *B*, a public servant, as a reward for showing *A* some favour in the exercise of *B*'s official functions. *B* accepts the bribe: *A* has abetted the offence defined in section 161.

(b) *A* instigates *B* to give false evidence. *B*, in consequence of the instigation commits that offence: *A* is guilty of abetting that offence, and is liable to the same punishment as *B*.

(c) *A* and *B* conspire to poison *Z*. *A*, in pursuance of the conspiracy, procures the poison, and delivers it to *B* in order that he may administer it to *Z*. *B*, in pursuance of the conspiracy, administers the poison to *Z* in *A*'s absence, and thereby causes *Z*'s death: Here *B* is guilty of murder. *A* is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

* As to the application of s. 109 to offences under special or local laws, see s. 40, *supra*.

The following note equally applies to ss. 110 and 111: Court by which offence abetted is triable.

Cog. if offence abetted cog. According as warrant or summons may issue for offence abetted.

According as offence abetted is bailable or not.

According as offence abetted is compoundable or not.

According as offence abetted is compoundable or not.

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According as offence abetted is compoundable or not.

110.* Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which

would have been committed if the act had been done with the intention or knowledge of the abettor, and with no other.

111. When an act is abetted, and a different act is done, the abettor is liable for the act done in the same manner, and to the same extent, as if he had directly abetted it :

Provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid, or in pursuance of the conspiracy, which constituted the abetment.

Illustrations.

(a) *A* instigates a child to put poison into the food of *Z*, and gives him poison for that purpose. The child, in consequence of the instigation by mistake, puts the poison into the food of *Y*, which is by the side of that of *Z* : Here, if the child was acting under the influence of *A*'s instigation, and the act done was, under the circumstances, a probable consequence of the abetment, *A* is liable in the same manner, and to the same extent, as if he had instigated the child to put the poison into the food of *Y*.

(b) *A* instigates *B* to burn *Z*'s house. *B* sets fire to the house, and, at the same time, commits theft of property there : *A*, though guilty of abetting the burning of the house, is not guilty of abetting the theft, for the theft was a distinct act, and not a probable consequence of the burning.

(c) *A* instigates *B* and *C* to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose. *B* and *C* break into the house, and, being

* As to the application of s. 110 to offences under special or local laws, see s. 40, *supra*.

resisted by Z, one of the inmates, murder Z: Here, if the murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

112.* If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

Abettor when liable to cumulative punishment for act abetted, and for act done.

Illustration.

A instigates B to resist by force a distress made by a public servant. B in consequence, resists that distress. In offering the resistance, B voluntarily causes grievous hurt to the officer executing the distress. As B has committed both the offence of resisting the distress and the offence of voluntarily causing grievous hurt, B is liable to punishment for both these offences; and, if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress, A will also be liable to punishment for each of the offences.

113. When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment causes a different effect from that intended by the abettor, the abettor is liable for the effect caused in the same manner, and to the same extent, as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

Liability of abettor for an effect caused by the act abetted different from that intended by the abettor.

Illustration.

A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes grievous hurt to Z. Z dies in consequence: Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder.

Note to sec. 113.—Court by which offence abetted is triable
Cognate offence abetted cognate
According as warrant or summons may issue for offence abetted.
According as offence abetted is bailable or not
According as offence abetted is compoundable or not.

* As to the application of s. 112 to offences under special or local laws, see s. 40, *supra*.

Note to
sec. 114.—
Court by
which of-
fence abet-
ted is tri-
able.

Cog. if
offence abet-
ted con-

According
as warrant
or summons
may issue
for offence
abetted.

According
as offence
abetted is
bailable
or not.

According
as offence
abetted is
compound-
able or not.

Court by
which
offence abet-
ted is tri-
able.

Cog. if of-
fence abet-
ted con-

According
as warrant
or summons
may issue
for offence
abetted.

According
as offence
abetted is
bailable or
not.

114.* Whenever any person, who, if absent, would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

Comment.—In this connection read s. 34 according to which, where a criminal act is done by several persons, each is liable as if it were done by himself alone; so that if two or more persons are present aiding and abetting in the commission of a murder, each will be tried and convicted as a principal, though it might not be proved which of them actually committed the act. This section appears to refer to cases somewhat different namely, where a person by abetment, previous to the commission of the act renders himself liable as an abettor is present when the act is committed, but takes no active part in the doing of it.—*Ratanlal*.

115.* Whoever abets the commission of an offence punishable with death or transportation for life shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Illustration.

A instigates *B* to murder *Z*. The offence is not committed. If *B* had murdered *Z*, he would have been subject to the punishment of death or transportation for life. Therefore *A* is liable

* As to the application of ss. 114 to 115 to offences under special or local laws, see s. 40, *supra*.

to imprisonment for a term which may extend to seven years, and also to a fine; and if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

116.* Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for that offence, or with such fine as is provided for that offence, or with both ;

and, if the abettor or the person abetted is a public servant whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Abetment of offence punishable with imprisonment—
if offence be not committed ;
if abettor or person abetted be a public servant whose duty it is to prevent offence.

Court by which offence abetted is triable.
Cog. if offence abetted cognisable as warrant or summons may issue for offence abetted.
According as offence abetted is bailable or not.
According as offence abetted is compoundable or not.

Illustrations.

(a.) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe: A is punishable under this section.

(b.) A instigates B to give false evidence: Here, if B does not give false evidence, A has nevertheless committed the offence defined in this section, and is punishable accordingly.

(c.) A, a police-officer whose duty it is to prevent robbery, abets the commission of robbery: Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

(d.) B abets the commission of a robbery by A, a police-officer whose duty it is to prevent that offence. Here, though the robbery be not committed, B is liable to one-half of the

* As to the application of s. 116 to offences under special or local laws, see s. 40, *supra*.

longest term of imprisonment provided for the offence of robbery, and also to fine.

Court by which offence abetted is triable.

Cog. if offence abetted cog.

According as warrant or summons may issue for offence abetted.

According as offence abetted is bailable or not.

According as offence abetted is compoundable or not.

Court by which offence abetted is triable.

Cog. if offence abetted cog.

According as warrant or summons may issue for offence abetted.

Not bailable.

According as offence abetted is compoundable or not.

117.* Whoever abets the commission of an offence by the public, or by more than ten persons.

by the public generally, or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Illustration.

A affixes in a public place a placard, instigating a sect, consisting of more than ten members, to meet at a certain time and place for the purpose of attacking the members of an adverse sect while engaged in a procession: A has committed the offence defined in this section.

Concealing design to commit offence punishable with death or transportation for life.

118. Whoever, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence punishable with death or transportation for life,

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

shall, if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years; or, if the offence be not committed, with imprisonment of either description for a term which may extend to three years; and, in either case, shall also be liable to fine.

Illustration.

A, knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed

* As to the application of s. 117 to offences under special or local laws, see s. 40, *supra*.

at *C*, a place in an opposite direction, and thereby misleads the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at *B* in pursuance of the design: *A* is punishable under this section.

119. Whoever, being a public servant, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence, which it is his duty, as such public servant, to prevent, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall, if the offence be committed, be punished with imprisonment of any description provided for the offence for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both;

Public servant concealing design to commit offence which it is his duty to prevent.

Court by which offence abetted is triable. Cog. if offence abetted cog. According as warrant or summons may issue for offence abetted. According as offence abetted is bailable or not. According as offence abetted is compoundable or not.

or, if the offence be punishable with death or transportation for life, with imprisonment of either description for a term which may extend to ten years;

if offence be punishable with death, &c.,

or, if the offence be not committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one-fourth part of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

if offence be not committed.

Comment.—The offence is aggravated here because the offender is a public servant—*Morgan and Macpherson*.

Illustration.

A, an officer of police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and knowing that *B* designs to commit robbery, omits to give such information with intent to facilitate the commission of that offence: Here *A* has, by an illegal omission, concealed the existence of *B*'s design, and is liable to punishment according to the provision of this section.

Court by which offence abetted is triable.

Cog. if offence abetted cog.

According as warrant or summons may be issued for offence abetted.

According as offence abetted is bailable or not.

According as offence abetted is compoundable or not.

120. Whoever, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence punishable with imprisonment,

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

shall, if the offence be committed, be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth, and, if the offence be committed, to one-eighth, of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

CHAPTER VA.*

CRIMINAL CONSPIRACY.

Ditto.

Definition of Criminal conspiracy.

120A. When two or more persons agree to do, or cause to be done,—

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy :

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

* Inserted by Act VIII. of 1913.

120B. (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, transportation or rigorous imprisonment for a term of two years or upwards, shall where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

Court by which offence abetted is triable. Cog. offence abetted is cog. According as warrant or summons may issue for offence abetted. According as offence abetted is bailable or not. According as offence abetted is compoundable or not Sanction.

CHAPTER VI.*

OF OFFENCES AGAINST THE STATE.

Analysis:—Three classes of offences are punishable by this Chapter—(1) offences against the Queen and Her Government; (2) offences concerning the relations of the Indian Government with other Governments; (3) offences touching the custody of prisoners of State or war; of these the first case is the most important.—*Morgan and Macpherson.*

121. Whoever wages war against the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished with death or transportation for life, and shall forfeit all his property.

Waging or attempting to wage war, or abetting waging of war, against the Queen.

Ct. of Sec. Uncoy. Warrant. Not bailable. Not comp. Sanction.

Illustrations.

(a.) A joins an insurrection against the Queen: A has committed the offence defined in this section.

* All persons are bound to give information of offences punishable under ss 121 to 126 (inclusive) and s. 130 of this Chapter.—See the Code of Criminal Procedure (Act V. of 1898), s. 44.

As to authority for instituting prosecutions under Ch. VI. (except s. 127), see the Code of Criminal Procedure (Act V of 1898), s. 196.

(b.) *A*, in India abets an insurrection against the Queen's Government of Ceylon by sending arms to the insurgents: *A* is guilty of abetting the waging of war against the Queen.

Ct. of Ses.
Uncog.
Warrant.
Not bail-
able.
Not comp.
Sanction.

121A † Whoever, within or without British India,

conspires to commit any of the offences punishable by section 121, or to deprive the Queen of the sovereignty of British India, or of any part thereof, or conspires to overawe, by means of criminal force or the show of criminal force, the Government of India or any Local Government, shall be punished with transportation for life or any shorter term, or with imprisonment of either description, which may extend to ten years.

Explanation.—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.

Ditto.

122. Whoever collects men, arms, or ammunition,

or otherwise prepares to wage war, with the intention of either waging, or being prepared to wage, war against the Queen, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall forfeit all his property.

Ditto.

123. Whoever, by any act or by any illegal omission,

conceals the existence of a design to wage war against the Queen, intending, by such concealment, to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

† S. 121A has been inserted by the Indian Penal Code Amendment Act (XXVII. of 1870), s. 4. Chs. IV., V., and XXIII. of this Code apply to offences punishable under s. 121A. —See Act XXVII. of 1870, s. 13.

124. Whoever, with the intention of inducing or compelling the Governor-General of India, or the Governor of any Presidency, or a Lieutenant-Governor, or a Member of the Council of the Governor-General of India, or of the Council of any Presidency, to exercise, or refrain from exercising, in any manner any of the lawful powers of such Governor-General, Governor, Lieutenant-Governor, or Member of Council,

Ct. of Ses.
Uncoq.
Warrant.
Not bail-
able.
Not comp.
Sanction.

assaults or wrongfully restrains, or attempts wrongfully to restrain, or overawes, by means of criminal force or the show of criminal force, or attempts so to overawe, such Governor-General, Governor, Lieutenant-Governor, or Member of Council,

shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

124A.* Whoever, by words, either spoken or written, or by signs, or by visible representation or otherwise, brings, or attempts to bring, into hatred or contempt, or excites, or attempts to excite, disaffection towards, Her Majesty or the Government established by law in British India, shall be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Ct. of Ses.
Chf. Pres.
Mag., or Dt.
Mag., or
Mag. of 1st
class spec-
ially em-
powered by
Local
Govt. in
that behaf.
Uncoq.
Warrant.
Not bail-
able.
Not comp.
Sanction.

Explanation 1.—The expression “disaffection” includes disloyalty and all feelings of enmity.

Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view

* S. 124A has been substituted by the Indian Penal Code Amendment Act (IV. of 1893), s. 4, for the original s. 124A as inserted in the Code by the Indian Penal Code Amendment Act (XXVII. of 1870), s. 5. Chs. IV. and V. of this Code apply to offences punishable under s. 124A.—See Act XXVII. of 1870, s. 13.

to obtain their alteration by lawful means, without exciting, or attempting to excite, hatred, contempt, or disaffection, do not constitute an offence under this section.

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government, without exciting or attempting to excite hatred, contempt, or disaffection, do not constitute an offence under this section.

Attempt.—To constitute an attempt punishable under the Penal Code, all that is necessary is some external act, something tangible and ostensible, of which the law can take hold as an act showing progress towards the actual commission of the offence. It does not matter that the progress was interrupted.

Disaffection.—Disaffection means a feeling contrary to affection, in other words, dislike or hatred. It means hatred, enmity, hostility, contempt, and every form of ill-will to the Government. "Disloyalty" is perhaps the best general term, comprehending every possible form of bad feeling to the Government. The word is used in a special sense as meaning political alienation or discontent, that is to say, a feeling of disloyalty to the existing Government, which tends to a disposition not to obey, but to resist and subvert the Government.

Explanations 2 and 3.—These are intended to protect criticisms of government measures, and of administrative and executive actions of Government.

It. of Sec.
Unleg.
Warrant.
Not bind-
able.
Not comp.
Sanction.

125. Whoever wages war against the Government of any Asiatic Power in alliance or at peace with the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished with transportation for life, to which fine may be added, or with imprisonment of either description for a term which may extend to seven years, to which fine may be added, or with fine.*

* See also the Foreign Enlistment Act, 1870 (Stat. 33 & 34 Vict., c. 90), which applies to the whole of Her Majesty's dominions.

126. Whoever commits depredation, or makes preparations to commit depredation, on the territories of any Power in alliance or at peace with the Queen, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, and to forfeiture of any property used, or intended to be used, in committing such depredation, or acquired by such depredation.*

Ct. of Ses.
Uncog.
Warrant.
Not bail-
able.
Not comp.
Sanction.

127. Whoever receives any property, knowing the same to have been taken in the commission of any of the offences mentioned in sections 125 and 126, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, and to forfeiture of the property so received.

Ct. of Ses.
Uncog.
Warrant.
Not bail-
able.
Not comp.

128. Whoever, being a public servant, and having the custody of any State prisoner or prisoner of war, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with transportation for life or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses.
Uncog.
Warrant.
Not bail-
able.
Not comp.
Sanction.

State Prisoner.—It does not seem certain whether persons amenable to the jurisdiction of our Courts, and convicted of any of the offences contained in this chapter would be properly deemed prisoners of State.

Prisoner of war.—A prisoner of war is one who, in war, is taken in arms.

129. Whoever, being a public servant, and having the custody of any State prisoner or prisoner of war, negligently suffers such prisoner to escape from any

Ct. of Ses.
Presy. Mag.
or Mag. of
1st class.
Uncog.
Warrant.
Bailable.
Not comp.
Sanction.

* See also the Foreign Enlistment Act, 1870 (Stat. 33 & 34 Vict., c. 90), which applies to the whole of Her Majesty's dominions.

place of confinement in which such prisoner is confined, shall be punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.

Ct. of Ses.
Uncog.
Warrant.
Not bail-
able.
Not comp.
Sanction.

130. Whoever knowingly aids or assists any State prisoner or prisoner of war in escaping from lawful custody, or rescues, or attempts to rescue, any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers, or attempts to offer, any resistance to the recapture of such prisoner, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A State prisoner or prisoner of war, who is permitted to be at large on his parole within certain limits in British India, is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

Knowingly aids.—It is essential to this very grave offence to show that the accused has a knowledge of the character in which the prisoner is confined i. e., that he is a prisoner of State or war.

CHAPTER VII.

OF OFFENCES RELATING TO THE ARMY AND NAVY.*

Ct. of Ses.
Cognizable,
Warrant.
Not bail-
able.
Not comp.

131. Whoever abets the committing of mutiny by an officer, soldier, or sailor in the army or navy of the Queen, or attempts to seduce any such officer, soldier, or sailor from his allegiance or his duty, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

* Also the Indian Marine Service.—See s. 138A, *infra*.

Explanation.*—In this section, the words “officer” and “soldier” include any person subject to the Articles of War† for the better government of Her Majesty’s army or to the Articles of War contained in Act No. V. of 1869.

Mutiny.—The offence of mutiny consists in extreme insubordination, as if a soldier resists by force, or if a number of soldiers rise against or oppose their military superiors, such acts proceeding from alleged or pretended grievances of a military nature. Acts of riotous nature directed against the Government or civil authorities rather than against military superiors seem also to constitute mutiny—*Ratanlal*.

132. Whoever abets the committing of mutiny by an officer, soldier, or sailor in the army or navy of the Queen shall, if mutiny be committed in consequence of that abetment, be punished with death, or with transportation for life or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Abetment of mutiny, if mutiny is committed in consequence thereof.

Ct. of Ses.
Cognizable
Warrant.
Not bail-
able.
Not comp.

133. Whoever abets an assault by an officer, soldier, or sailor in the army or navy of the Queen on any superior officer being in the execution of his office shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Abetment of assault by soldier or sailor on his superior officer when in execution of his office.

Ct. of Ses.
Presv. Mag.
or Mag. of
1st class.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

Assault.—The assault here meant may probably be that which the Mutiny Acts and Articles of war provide against, namely the striking a superior officer, or using or offering any violence against him when he is on duty.—*Morgan and Macpherson*.

134. Whoever abets an assault by an officer, soldier, or sailor in the army or navy of the Queen on any superior officer being in the execution of his office shall,

Abetment of such assault if the assault is committed.

Ct. of Ses.
Cognizable.
Warrant.
Not bail-
able.
Not com.

* In s. 131, the *Explanation* has been added by the Indian Penal Code Amendment Act (XXVII. of 1870), s. 6.

† See now the Army Act, 1881 (Stat. 44 & 45 Vict., c. 58), as continued and amended by subsequent annual Army Acts.

if such assault be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Pres. Mag.
or Mag. of
1st or 2nd
class.
Cognizable.
Warrant.
Bailable.
Not comp.

135. Whoever abets the desertion of any officer, soldier, or sailor in the army or navy of the Queen shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Desertion—The offence of desertion from the Army or Navy consist in this, that the officer soldier, or sailor is unlawfully absent from his duty, and has no intention of returning to it.—*Morgan & Macpherson.*

Dist.

136. Whoever, except, as hereinafter excepted, Harbours deser- knowing, or having reason to believe, ter. that an officer, soldier, or sailor in the army or navy of the Queen has deserted, harbours such officer, soldier, or sailor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Exception.—This provision does not extend to the case in which the harbour is given by a wife to her husband.

Pres. Mag.
or Mag. of
1st or 2nd
class.
Uncog.
Summons.
Bailable.
Not comp.

137. The master or person in charge of a merchant vessel, on board of which any deserter from the army or navy of the Queen is concealed, shall, though ignorant of such concealment, be liable to a penalty not exceeding five hundred rupees if he might have known of such concealment but for some neglect of his duty as such master or person in charge, or for some want of discipline on board of the vessel.

Pres. Mag.
or Mag. of
1st or 2nd
class.
Cognizable.
Warrant.
Bailable.
Not comp.

138. Whoever abets what he knows to be an act of insubordination by an officer, soldier, or sailor in the army or navy of the Queen, shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Application of foregoing sections to the Indian Marine Service.

138A.* The foregoing sections of this chapter shall apply as if Her Majesty's Indian Marine Service were comprised in the navy of the Queen.

139. No person subject to any Articles of War for the army or navy of the Queen, or to Articles of War. for any part of such army or navy, is subject to punishment under this Code for any of the offences defined in this chapter.

140. Whoever, not being a soldier in the military or naval service of the Queen, wears any garb or carries any token resembling any garb or token used by such a soldier, with the intention that it may be believed that he is such a soldier, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Any Mag. Cogniz. Sumsion. Bailable. Not com.

CHAPTER VIII.†

OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

141. An assembly of five or more persons is designated an "unlawful assembly" if the common object of the persons composing that assembly is—

* S. 138A has been inserted by the Indian Marine Act (XIV. of 1887), s. 79.

† As to duty to give information of offences punishable under ss. 143, 144, 145, 147, or 148, see the Code of Criminal Procedure (Act V. of 1898), ss. 44 and 45.

In s. 141 the word "offence" has the same meaning when the thing punishable under the special or local law as defined in ss. 41 and 42 is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—See s. 40, *supra*.

first—to overawe, by criminal force or show of criminal force, the Legislative or Executive Government of India, or the Government of any Presidency, or any Lieutenant-Governor, or any public servant in the exercise of the lawful power of such public servant ; or

second—to resist the execution of any law or of any legal process ; or

third—to commit any mischief or criminal trespass or other offence ; or,

fourth—by means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water, or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right ; or

fifth—by means of criminal force or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled may subsequently become an unlawful assembly.

142. Whoever, being aware of facts which render

Being member of any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

143.* Whoever is a member of an unlawful assembly

Punishment. shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Any Mag.
Cognizable.
Summons.
Bailable.
Not comp.

* As to the duty to give information of offences punishable under s. 143, see the Code of Criminal Procedure (Act V. of 1898), ss. 44 and 45.

144.* Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Joining unlawful assembly armed with deadly weapon.

Any Mag. Cognizable. Warrant. Bailable. Not comp.

145.* Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Joining or continuing in unlawful assembly knowing it has been commanded to disperse.

Ditto.

146. Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

Rioting.

Any Mag. Cognizable. Warrant. Bailable. Not comp.

147.* Whoever is guilty of rioting shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Punishment for rioting.

Ditto.

Comment—The basis of the law as to rioting is the definition of an unlawful assembly, a riot being simply an unlawful assembly in a particular state of activity.

148.*† Whoever is guilty of rioting being armed with a deadly weapon, or with anything which, used as a weapon of

Rioting armed with deadly weapon.

Ct. of Ses., Presy. Mag. or Mag. of 1st class. Cognizable. Warrant. Bailable. Not comp.

* As to the duty to give information of offences punishable under ss. 144, 145, 147, and 148, see the Code of Criminal Procedure (Act V. of 1898), ss. 44 and 45.

† As to punishment for an offence under s. 148, enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Court by which offence is triable. According as arrest may be made without warrant for offence or not. According as warrant or summons may issue for offence. According as offence is bailable or not. Not comp.

149. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person, who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

Comment—The one essential point, which must be established before s. 149 applies is, that the act must be an act committed in the *prosecution* of a common object of the unlawful assembly, or must be such as the members knew to be likely to be committed in prosecution of that object.

Court by which offence is triable. Cognizable. Warrant or summons, according to offence committed by person hired, &c. According as offence is bailable or not. Not comp.

150. Whoever hires, or engages or employs, or promotes, or connives at, the hiring, engagement, or employment of, any person to join or become a member of any unlawful assembly, shall be punishable, as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly in pursuance of such hiring, engagement, or employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

Object.—Affrays attended by much violence, and occasionally ending in death, are committed in some parts of India by persons either hired or employed for such work alone, or who are not or may not be ordinarily retainers or labourers in the service of the person hiring them. The object of this section seems to be to bring within reach of law those who are really the originators and instigators of the offences committed by such persons.

151. Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace after such assembly has been lawfully commanded to disperse shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Any Mag.
Cognizable
Summons
Bailable
Not comp.

Explanation.—If the assembly is an unlawful assembly within the meaning of section 141, the offender will be punishable under section 145.

152. Whoever assaults or threatens to assault, or obstructs or attempts to obstruct, any public servant in the discharge of his duty as such public servant in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, or uses, or threatens or attempts to use, criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Ct. of Ses.
Presy.
Mag. or
Mag. of 1st
class.
Cognizable.
Warrant.
Bailable
Not comp.

153. Whoever maliciously or wantonly, by doing anything which is illegal, gives provocation to any person, intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and, if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Any Mag.
Cognizable
Warrant.
Bailable.
Not comp.

Any Mag.
Cognizable.
Summons
Bailable.
Not comp.

Comment.—*Malignantly* implies certain sort of malice but *wantonly* means recklessly or thoughtlessly *i. e.*, without any regard for consequences.

Presv. Mag.
or Mag. of
1st class.
Uncog.
Warrant.
Not bail-
able.
Not comp.
Sanction.

153A.* Whoever, by words, either spoken or written, Promoting enmity or by signs, or by visible representations or otherwise, promotes, or attempts to promote, feelings of enmity or hatred between different classes of Her Majesty's subjects, shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Explanation.—It does not amount to an offence within the meaning of this section to point out, without malicious intention, and with an honest view to their removal, matters which are producing, or have a tendency to produce, feelings of enmity or hatred between different classes of Her Majesty's subjects.

Presv. Mag.
or Mag. of
1st or 2nd
class.
Uncog.
Summons.
Bailable.
Not comp.

154. Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand rupees,

if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest police-station,

and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it, and, in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

* S. 153A has been inserted by the Indian Penal Code Amendment Act (IV. of 1898), s. 5. As to authority for instituting prosecutions under s. 153A, see the Code of Criminal Procedure (Act V. of 1898), s. 196.

155. Whenever a riot is committed for the benefit, or on behalf, of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom,

Presy. Mag.
or Mag. of
1st or 2nd
class.
Uncog.
Summons.
Bailable.
Not comp.

such person shall be punishable with fine if he or his agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held shall not, respectively use all lawful means in his or their power to prevent such assembly or riot from taking place and for suppressing and dispersing the same.

156. Whenever a riot is committed for the benefit, or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted, or derived any benefit therefrom,

Ditto

the agent or manager of such person shall be punishable with fine if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place, and for suppressing and dispersing the same.

157. Whoever harbours, receives, or assembles in any house or premises in his occupation or charge, or under his control, any persons, knowing that such persons have been hired, engaged, or employed, or are about to be hired, engaged, or employed, to join, or become members of, an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Presy. Mag.
or Mag. of
1st or 2nd
class.
Cognizable.
Summons.
Bailable.
Not comp.

Presy. Mag.
or Mag. of
1st or 2nd
class.
Cognizable.
Summons.
Bailable.
Not comp.

158. Whoever is engaged or hired, or offers or attempts to be hired or engaged, to do, or assist in doing, any of the acts specified in section 141, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both ;

Presy. Mag.
or Mag. of
1st or 2nd
class.
Cognizable.
Warrant.
Bailable.
Not comp.

and whoever, being so engaged or hired as aforesaid, goes armed, or engages, or offers to go armed, with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

159. When two or more persons, by fighting in a public place, disturb the public peace, they are said to "commit an affray."

Any Mag.
Unog.
Summons.
Bailable.
Not comp.

160. Whoever commits an affray shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

CHAPTER IX.*

OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

Ct. of Ses.,
Presy. Mag.
or Mag. of
1st class.
Unog.
Summons.
Bailable.
Not comp.

161. Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself, or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing, or forbearing to do, any

* As to authority for institution of prosecutions against certain public servants, see the Code of Criminal Procedure (Act V. of 1898), s. 197.

official act, or for showing, or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering, or attempting to render, any service or disservice to any person, with the legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Explanation.—"Expecting to be a public servant."—If a person, not expecting to be in office, obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

"Gratification."—The word "gratification" is not restricted to pecuniary gratifications, or to gratifications estimable in money.

"Legal remuneration."—The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government* which he serves to accept.

"A motive or reward for doing."—A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words.

Illustrations.

(a.) A, a Munsif, obtains from Z, a banker, a situation in Z's bank for A's brother, as a reward to A for deciding a cause in

* In the definition of "legal remuneration," the word "Government" includes—

(1) a Court of Wards for the purposes of s. 12 (2) of the Central Provinces Government Wards Act (XVII. of 1885);

(2) the Senate of the Allahabad University for the purposes of s. 18 (1) of the Allahabad University Act (XVIII. of 1887);

(3) any employer of a railway-servant as such for the purposes of s. 137 (1) of the Indian Railways Act (IX. of 1890).

favour of Z: A has committed the offence defined in this section.

(b.) A, holding the office of Resident at the Court of a subsidiary Power, accepts a lakh of rupees from the minister of that Power. It does not appear that A accepted this sum as a motive or reward for doing or forbearing to do any particular official act, or for rendering or attempting to render any particular service to that Power with the British Government. But it does appear that A accepted the sum as a motive or reward for generally showing favour in the exercise of his official functions to that Power: A has committed the offence defined in this section.

(c.) A, a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z, and thus induces Z to give A money as a reward for this service: A has committed the offence defined in this section.

Ct. of Ses.,
Presv. Mag.
or Mag. of
1st class.
Uncog.
Summons.
Bailable.
Not comp.

162. Whoever accepts or obtains, or agrees to

Taking gratification
in order, by corrupt
or illegal means, to
influence public ser-
vant.

accept or attempts to obtain, from
any person, for himself or for any
other person, any gratification what-
ever as a motive or reward for indu-
cing, by corrupt or illegal means,

any public servant to do or to forbear to do any official act, or, in the exercise of the official functions of such public servant, to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person, with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, "or with any member of the Senate of the Allahabad University,"* or with any public servant as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Presv. Mag.
or Mag. of
1st class.
Uncog.
Summons.
Bailable.
Not comp.

163. Whoever accepts or obtains, or agrees to

Taking gratification
for exercise of per-
sonal influence with
public servant.

accept or attempts to obtain, from
any person, for himself or for any
other person, any gratification what-
ever as a motive or reward for in-

* In s. 162 the words quoted have been inserted by the Allahabad University Act (XVIII of 1887), s. 18 (2).

ducing, by the exercise of personal influence, any public servant to do, or to forbear to do, any official act, or, in the exercise of the official functions of such public servant, to show favour or disfavour to any person, or to render, or attempt to render, any service or disservice to any person with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, "or with any member of the Senate of the Allahabad University,"* or with any public servant as such, shall be punished with simple imprisonment, for a term which may extend to one year, or with fine, or with both.

Illustration.

An advocate who receives a fee for arguing a case before a judge; a person who receives pay for arranging and correcting a memorial addressed to Government, setting forth the services and claims of the memorialist, a paid agent for a condemned criminal, who lays before the Government statements, tending to show that the condemnation was unjust, are not within this section, inasmuch as they do not exercise or profess to exercise personal influence.

164. Whoever, being a public servant, in respect of whom either of the offences defined in the last two preceding sections is committed, abets the offences, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for abetment by public servant of offences defined in section 162 or 163.

Cr. of Ses.
Pres. Mag.
or Mag. of
Sessions
Unqual.
Sessions
Bail. off.
Not comp.

Illustration.

A is a public servant. B, A's wife, receives a present as a motive for soliciting A to give an office to a particular person. A abets her doing so: B is punishable with imprisonment for a term not exceeding one year, or with fine, or with both. A is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

* In s. 163, the words quoted have been inserted by the Allahabad University Act (XVIII. of 1887), s. 18 (2).

Presy. Mag.
or Mag. of
1st or 2nd
class.
Uncog.
Summons.
Bailable.
Not comp.

165. Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate,

from any person whom he knows to have been, or to be, or to be likely to be, concerned in any proceeding or business transacted, or about to be transacted, by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate,

or from any person whom he knows to be interested in, or related to, the person so concerned,

shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Illustrations.

(a.) *A*, a Collector, hires a house of *Z*, who has a settlement-case pending before him. It is agreed that *A* shall pay fifty rupees a month, the house being such that, if the bargain were made in good faith, *A* would be required to pay two hundred rupees a month: *A* has obtained a valuable thing from *Z* without adequate consideration.

(b.) *A*, a Judge buys of *Z*, who has a cause pending in *A*'s Court, Government Promissory Notes at a discount when they are selling in the market at a premium: *A* has obtained a valuable thing from *Z* without adequate consideration.

(c.) *A*'s brother is apprehended and taken before *A*, a Magistrate, on a charge of perjury. *A* sells to *Z* shares in a bank at a premium when they are selling in the market at a discount. *Z* pays *A* for the shares accordingly: The money so obtained by *A* is a valuable thing obtained by him without adequate consideration.

Presy. Mag.
or Mag. of
1st or 2nd
class.
Uncog.
Summons.
Bailable.
not comp.

166. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause injury to any person.

shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration.

A, being an officer directed by law to take property in execution in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law with the knowledge that he is likely thereby to cause injury to Z : A has committed the offence defined in this section.

167. Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Public servant framing an incorrect document with intent to cause injury.

Ct. of Ses., Presy. Mag. or Mag. of 1st class. Uncog. Summons. Bailable. Not comp.

168. Whoever, being a public servant, and being legally bound, as such public servant, not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Public servant unlawfully engaging in trade.

Presy. Mag. or Mag. of 1st class. Uncog. Summons. Bailable. Not comp.

169. Whoever, being a public servant, and being legally bound, as such public servant, not to purchase or bid for certain property, purchases or bids for that property, either in his own name, or in the name of another, or jointly or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both : and the property, if purchased, shall be confiscated.

Public servant unlawfully buying or bidding for property.

Ditto.

170. Whoever pretends to hold any particular office as a public servant, knowing that he does not hold such office, or falsely personates any other person holding such office, and, in such assumed character, does, or attempts to do, any act

Personating a public servant.

Any Mag. Cognizable. Warrant. Bailable. Not comp.

under colour of such office, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Any Mag.
Cognizable.
Summons.
Bailable.
Not comp.

171. Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

CHAPTER X.*

OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

Any Mag.
Uncog.
Summons.
Bailable.
Not comp.
Sanction.

172. Whoever absconds in order to avoid being served with a summons, notice, or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice, or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

* As to the application of ss. 176, 177. and 187 of this chapter to offences under special or local laws, *see* s. 40, *supra*.

As to authority for instituting prosecutions under ss. 172 to 188 (both inclusive), *see* the Code of Criminal Procedure (Act V. of 1898), s. 195 (1) (a).

As to procedure in case of offences described in ss. 175, 178, 179, and 180, *see* the Code of Criminal Procedure (Act V. of 1898), ss. 480, 481, 482, and the Presidency Small Cause Courts Act (XV. of 1882), Ch. XII.

or, if the summons, notice, or order is to attend in person or by agent, or to produce a document, in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

173.* Whoever, in any manner, intentionally prevents the serving on himself, or on any other person, of any summons, notice, or order proceeding for any public servant legally competent, as such public servant, to issue such summons, notice, or order,

Presy. Mag.
or Mag. of
1st or 2nd
class.
Uncog.
Summons.
Bailable.
Not comp.
Sanction.

or intentionally prevents the lawful affixing to any place of any such summons, notice, or order,

or intentionally removes any such summons, notice, or order from any place to which it is lawfully affixed,

or intentionally prevents the lawful making of any proclamation under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both ;

or, if the summons, notice, order, or proclamation is to attend in person or by agent, or to produce a document, in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

174.* Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order, or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same,

Any Mag.
Uncog.
Summons.
Bailable.
Not comp.
Sanction.

* As to authority for instituting prosecutions under ss. 173 and 174, see the Code of Criminal Procedure (Act V. of 1898), s. 195 (1) (a).

intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both ;

or, if the summons, notice, order, or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustrations.

(a.) *A*, being legally bound to appear before the Supreme Court at Calcutta in obedience to a subpoena issuing from that Court, intentionally omits to appear: *A* has committed the offence defined in this section.

(b.) *A*, being legally bound to appear before a Zillah Judge as a witness in obedience to a summons issued by that Zillah Judge, intentionally omits to appear: *A* has committed the offence defined in this section.

Court in which offence committed, subject to provisions of ch. 35 ; or (if not committed in Court.) Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not com. Sanction.

175.* Whoever, being legally bound to produce or deliver up any document to any public servant as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both ;

or, if the document is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

* As to procedure in case of an offence described in s. 175, see the Code of Criminal Procedure (Act V. of 1898), ss. 480, 481, 482, and the Presidency Small Cause Courts Act (XV. of 1882), Ch. XII.

As to authority for instituting prosecutions under s. 175, see the Code of Criminal Procedure (Act V. of 1898), s. 195 (1) (a).

Illustration.

A, being legally bound to produce a document before a Zillah Court, intentionally omits to produce the same: A has committed the offence defined in this section.

176.* Whoever, being legally bound to give any notice, or to furnish information on any subject, to any public servant as such, intentionally omits to give such notice, or to furnish such information, in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both ;

Presy. Mag.
or Mag. of
1st or 2nd
class.¹
Uncog.
Summons.
Bailable.
Not comp.
Sanction.

or, if the notice or information required to be given respects the commission of an offence,* or is required for the purpose of preventing the commission of an offence,* or in order to the apprehension of an offender,* with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

177.* Whoever, being legally bound to furnish information on any subject to any public servant as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both ;

Ditto.

* In ss. 176, and 177 the word " offence " has the same meaning when the thing punishable under the special or local law as defined in ss 41 and 42 is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—See s. 40 *supra*.

As to meaning of " offence " and " offender," see s. 177, *Explanation, infra*.

As to authority for instituting prosecutions under ss. 176 and 177, see the Code of Criminal Procedure (Act V. of 1893), s 195, (1) (a).

or, if the information which he is legally bound to give, respects the commission of an offence,* or is required for the purpose of preventing the commission of an offence,* or in order to the apprehension of an offender,* with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations.

(a) *A*, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake: *A* is guilty of the offence defined in this section.

(b.) *A*, a village-watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of *Z*, a wealthy merchant residing in a neighbouring place, and being bound, under cl. 5, s. 7, Reg. III., 1821,† of the Bengal Code, to give early and punctual information of the above fact to the officer of the nearest police-station, wilfully misinforms the police-officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction: Here *A* is guilty of the offence defined in the latter part of this section.

Explanation.‡—In section 176 and in this section, the word “offence” includes any act committed at any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460; and the word “offender” includes any person who is alleged to have been guilty of any such act.

* As to meaning of “offence” and “offender,” see s. 177, *Explanation, infra*.

† Ben. Reg. III. of 1821 has been repealed by Act XVII. of 1862—See s. 45 of the Code of Criminal Procedure (Act V. of 1898).

‡ This Explanation has been added by the Indian Criminal Laws Amendment Act (III. of 1894), s. 5.

178.* Whoever refuses to bind himself, by an oath "or affirmation."† to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Court in which offence committed, subject to provisions of ch. 35; or (if not committed in Court): Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp. Sanction.

179.* Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant, in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Note to s. 179. Court in which offence committed, subject to provisions of ch. 35; or (if not committed in Court) Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp. Sanction.

180.* Whoever refuses to sign any statement made by him when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Ditto.

* As to authority for instituting prosecutions under ss. 178, 179 and 180, see the Code of Criminal Procedure (Act V. of 1898), s. 195 (1) (a).

As to procedure in case of offences described in ss. 178, 179 and 180, see the Code of Criminal Procedure (Act V. of 1898), ss. 480, 481, 482, and the Presidency Small Cause Courts Act (XV. of 1882), Ch. XII.

† In s. 178, the words quoted have been inserted by the Indian Oaths Act (X. of 1873), s. 15.

181.* Whoever, being legally bound, by an oath "or

Ct. of Ses.,
Presy. Mag.
or Mag. of
1st class.
Uncog.
Warrant.
Bailable.
Not comp.
Sanction.

False statement on oath or affirmation to public servant or person authorized to administer an oath or affirmation. affirmation,"† makes to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

182.*† Whoever gives to any public servant any

Presy. Mag.
or Mag. of
1st or 2nd
class.
Uncog.
Summons.
Bailable.
Not comp.
Sanction.

False information with intent to cause public servant to use his lawful power to the injury of another person. information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him,
or

(b) to use the lawful power of such public servant to the injury or annoyance of any person,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

* As to authority for instituting prosecutions under ss. 181 and 182, see the Code of Criminal Procedure (Act V. of 1898), s. 195 (1) (a),

† In s. 181, the words quoted have been inserted by the Indian Oaths Act (X. of 1873), s. 15.

‡ S. 182 has been substituted for the original by the Indian Criminal Laws Amendment Act (III. of 1895), s. 1.

Illustrations.

(a.) *A* informs a Magistrate that *Z*, a police-officer subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss *Z* : *A* has committed the offence defined in this section.

(b.) *A* falsely informs a public servant that *Z* has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of *Z*'s premises attended with annoyance to *Z* : *A* has committed the offence defined in this section.

(c.) *A* falsely informs a police-man that he has been assaulted and robbed in the neighbourhood of a particular village. He does not mention the name of any person as one of his assailants, but knows it to be likely that, in consequence of this information, the police will make enquiries, and institute searches, in the village to the annoyance of the villagers or some of them : *A* has committed an offence under this section.

183.* Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Resistance to the taking of property by lawful authority of public servant.

Presy. Mag. or Mag. of 1st or 2nd class. Unconv. Summons. Bailable. Not comp. Sanction.

184.* Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant as such shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Obstructing sale of property offered for sale by authority of public servant.

Ditto.

* As to authority for instituting prosecutions under ss. 183 and 184, see the Code of Criminal Procedure (Act V. of 1898), s. 195 (1) (a).

Presy. Mag.
or Mag. of
1st or 2nd
class.
Uncog.
Summons.
Bailable.
Not comp.
Sanction.

185.* Whoever, at any sale of property held by the lawful authority of a public servant as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Ditto.

186.* Whoever voluntarily obstructs any public servant in the discharge of his public functions shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Ditto.

187.* Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both ;

Ditto.

and, if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence,† or of suppressing a riot or affray, or of ap-

* As to authority for instituting prosecutions under ss. 185, 186 and 187, see the Code of Criminal Procedure (Act V. of 1898), s. 195 (1) (a).

† In s. 187, the word " offence " denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40, of this Code *supra*.

prehending a person charged with or guilty of an offence,* or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

183.† Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,

Presy. Mag.
or Mag. of
1st or 2nd
class.
Uncog.
Summons.
Bailable.
Not comp.
Sanction.

shall, if such disobedience causes or tends to cause obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both ;

and if such disobedience causes or tends to cause danger to human life, health, or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Ditto.

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

Illustration.

An order is promulgated by a public servant lawfully empowered to promulgate such order directing that a religious procession shall not pass down a certain street. A knowingly

* In s. 187, the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40, of this Code *supra*.

† As to authority for instituting a prosecution under s. 188, see the Code of Criminal Procedure (Act V. of 1898), s. 195 (1) (a).

disobeys the order, and thereby causes danger or riot: A has committed the offence defined in this section.

Presy. Mag.
or Mag. of
1st or 2nd
class.
Uncog.
Summons.
Bailable
Not comp.

189. Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ditto.

190. Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application, for protection against any injury, to any public servant legally empowered as such to give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XI.*

OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

This chapter is intended to provide for certain offences of that description which either do not properly fall within other chapters, or which call for more severe punishment because committed in order to obstruct public justice. It includes false evidence, and certain other offence against justice.—*Morgan and Macpherson.*

* As to the application of ss. 194, 195, 201 to 203, 211 to 214, 216, and 221 to 225 to offences under special or local laws, see s. 40, *supra*.

As to authority for instituting prosecutions under ss. 193 to 196, 199, 200, 205 to 211, and 228, see the Code of Criminal Procedure (Act V. of 1898), s. 195 (b).

191. Whoever, being legally bound by an oath, or Giving false evidence, by any express provision of law, to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, is said to give false evidence.

Explanation 1.—A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2.—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

Illustrations.

(a.) *A*, in support of a just claim which *B* has against *Z* for one thousand rupees, falsely swears on a trial that he heard *Z* admit the justice of *B*'s claim : *A* has given false evidence.

(b.) *A*, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of *Z* when he does not believe it to be the handwriting of *Z* : Here *A* states that which he knows to be false, and, therefore, gives false evidence.

(c.) *A*, knowing the general character of *Z*'s handwriting, states that he believes a certain signature to be the handwriting of *Z*, *A*, in good faith, believing it to be

As to procedure in case of the offences described in ss. 193, 196, 199, 200, and 205 to 210, see the Code of Civil Procedure (Act XIV. of 1882) s. 643, and in case of the offence described in s. 228, see the Code of Criminal Procedure (Act V. of 1898), ss. 480, 481, 482, and the Presidency Small Cause Courts Act (XV. of 1882), Ch. XII.

As to whipping for offences punishable under s. 193, or defined in ss. 194, 195, and 211, see now the Whipping Act (IV. of 1909).

As to punishment for offences under ss. 193 to 196, 201, 211, and 212 enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

so : Here *A*'s statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of *Z*, *A* has not given false evidence.

(*d.*) *A*, being bound by an oath to state the truth, states that he knows that *Z* was at a particular place on a particular day, not knowing any thing upon the subject : *A* gives false evidence, whether *Z* was at that place on the day named or not.

(*e.*) *A*, an interpreter or translator, gives or certifies, as a true interpretation or translation of a statement or document which he is bound by oath to interpret or translate truly, that which is not, and which he does not believe to be, a true interpretation or translation : *A* has given false evidence.

192. Whoever causes any circumstance to exist, or Fabricating false evidence. makes any false entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry, or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry, or false statement, so appearing in evidence, may cause any person, who, in such proceeding, is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence."

Illustrations.

(*a.*) *A* puts jewels into a box belonging to *Z*, with the intention that they may be found in that box, and that this circumstance may cause *Z* to be convicted of theft : *A* has fabricated false evidence.

(*b.*) *A* makes a false entry in his shop-book for the purpose of using it as corroborative evidence in a Court of Justice : *A* has fabricated false evidence.

(*c.*) *A*, with the intention of causing *Z* to be convicted of a criminal conspiracy, writes a letter in imitation of *Z*'s handwriting, purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the police are likely to search : *A* has fabricated false evidence.

193. Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

Ct. of Ses.
Presv. Mag.
or Mag. of
1st class.
Uncog.
Warrant.
Bailable
Not com.
Sanction.

and whoever intentionally gives or fabricates false evidence in any other case shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1.—A trial before a Court-martial* is a judicial proceeding †

Explanation 2.—An investigation directed by law preliminary to a proceeding before a Court of Justice is a stage of a judicial proceeding, † though that investigation may not take place before a Court of Justice.

Illustration.

A, in an inquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed to trial, makes on oath a statement which he knows to be false : As this inquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation 3.—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, † though that investigation may not take place before a Court of Justice.

* In *Explanation 1* to s. 193, the words, "or before a Military Court of Request," have here been omitted, having been repealed by the Cantonments Act (XIII. of 1889).

† For definition of "judicial proceeding" in the *Explanations* to s. 193, see the Code of Criminal Procedure (Act V. of 1898), s. 4 (m).

Illustration.

A, in an inquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false: As this inquiry is a stage of a judicial proceeding, A has given false evidence.

Ct. of Ses.
Uncog.
Warrant.
Not bail-
able.
Not comp.
Sanction.

194. Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence* which is capital "by the law of British India or England,"† shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine;

and, if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished, either with death or the punishment hereinbefore described.

Ct. of Ses.
Uncog.
Warrant.
Bailable.
Not com.
Sanction.

195. Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence* which, "by the law of British India or England,"† is not capital, but punishable with transportation for life, or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence* would be liable to be punished.

* In ss. 194 and 195 the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

† In ss. 194 and 195 as amended by s. 7 of the Indian Penal Code Amendment Act (XXVII. of 1870), the words quoted have been substituted for the words "by this Code or the law of England" by s. 149 of the Indian Railways Act (IX. of 1890).

Illustration.

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is transportation for life or rigorous imprisonment for a term which may extend to ten years, with or without fine: A, therefore, is liable to such transportation or imprisonment, with or without fine.

Note to s. 187—
Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st class,
Uncog.
Warrant.
According
as offence of
giving such
evidence is
bailable or
not.
Not comp.
Sanction.

196. Whoever corruptly uses, or attempts to use, as true or genuine evidence, any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

197. Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

—
Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st class,
Uncog.
Warrant.
Bailable.
Not comp.

198. Whoever corruptly uses, or attempts to use, any such certificate as a true certificate knowing the same to be false in any material point shall be punished in the same manner as if he gave false evidence.

Ditto.

199. Whoever, in any declaration* made or subscribed by him, which declaration* any Court of Justice, or any public servant or other person, is bound or authorized by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, touching any point material to the object for which the declaration* is made or used, shall be punished in the same manner as if he gave false evidence.

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st class,
Uncog.
Warrant.
Bailable.
Not comp.
Sanction.

* In s. 199, for meaning of "declaration," see s. 200, *Explanation, infra*.

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st class.
Uncog.
Warrant.
Bailable.
Not comp.
Sanction.

200. Whoever corruptly uses, or attempts to use, as true, any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Explanation.—A declaration which is inadmissible merely upon the ground of some informality is a declaration within the meaning of sections 199 and 200.

Ct. of Ses.,
Uncog.
Warrant.
Bailable.
Not comp.

201.* Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false,

shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st class.
Uncog.
Warrant.
Bailable.
Not comp.

and, if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

* In s. 201, the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—See s. 40, *supra*.

The word "offence" in s. 201 includes any act committed in any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely, 302, 304, 382, 392 to 399, 402, 435, 436, 449, 450, and 457 to 460.—See *Explanation* to s. 203, *infra*.

and, if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

Presy. Mag.
or Mag. of
1st class, or
Court by
which of-
fence is
triable.
Uncog.
Warrant.
Bailable.
Not comp.

Illustration.

A, knowing that *B* has murdered *Z*, assists *B* to hide the body with the intention of screening *B* from punishment: *A* is liable to imprisonment of either description for seven years, and also to fine.

202.* Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Presy. Mag.
or Mag. of
1st or 2nd
class
Uncog.
Summons.
Bailable.
Not comp.

203.† Whoever, knowing or having reason to believe that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Presy. Mag.
or Mag. of
1st or 2nd
class.
Uncog.
Warrant.
Bailable.
Not comp.

Explanation.‡—In sections 201 and 202, and in this section, the word ‘offence’ includes any act committed

* In s. 202, the word “offence” has the same meaning when the thing punishable under the special or local law with imprisonment for a term of six months or upwards, whether with or without fine.—See s. 40, *supra*. Also see the *Explanation* to s. 203 (*next following*).

† In s. 203, the word “offence” denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40, *supra*. See also the *Explanation* to the section.

‡ This *Explanation* has been added by the Indian Criminal Law Amendment Act (III. of 1894), s. 6.

in any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460.

Presy. Mag.
or Mag. of
1st class.
Uncog.
Warrant.
Bailable.
Not comp.

204. Whoever secretes or destroys any document which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant as

such, or obliterates or renders illegible the whole or any part of such document with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ct. of Ses.
Presy. Mag.
or Mag. of
1st class.
Uncog.
Warrant.
Bailable.
Not comp.
Sanction.

205. Whoever falsely personates another, and, in such assumed character, makes any admission or statement, or confesses judgment, or causes any process to be issued, or becomes bail or security, or does any other act in any suit or criminal prosecution shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Presy. Mag.
or Mag. of
1st or 2nd
class.
Uncog.
Warrant.
Bailable.
Not comp.
Sanction.

206. Whoever fraudulently removes, conceals, transfers, or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture, or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be

likely to be made, by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

207. Whoever fraudulently accepts, receives, or claims any property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practises any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture, or in satisfaction of a fine under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made, by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Presy. Mag.
or Mag. of
1st or 2nd
class.
Uncog.
Warrant.
Bailable.
Not comp.
Sanction.

208. Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due, or for a larger sum than is due to such person, or for any property or interest in property to which such person is not entitled, and fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Presy. Mag.,
or Mag. of
1st class.
Uncog.
War ant.
Bailable.
Not comp.
Sanction.

Illustration.

A institutes a suit against *Z*. *Z*, knowing that *A* is likely to obtain a decree against him, fraudulently suffers a judgment to pass against him for a larger amount at the suit of *B*, who has no just claim against him, in order that *B*, either on his

own account, or for the benefit of Z, may share in the proceeds of any sale of Z's property which may be made under A's decree: Z has committed an offence under this section.

Presy. Mag.
or Mag. of
1st class.
Uncog.
Warrant.
Bailable.
Not comp.
Sanction.

209. Whoever fraudulently or dishonestly, or with Dishonestly making intent to injure or annoy any person, false claim in Court. makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Not.

210. Whoever fraudulently obtains a decree or order Fraudulently ob- against any person for a sum not taining decree for sum due, or for a larger sum than is not due. due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied, or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ditto.

211.* Whoever, with intent to cause injury to any False charge of of- person, institutes, or causes to be fence made with intent instituted, any criminal proceeding to injure. against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both,

Uncog.
Warrant.
Bailable.
Not comp.
Sanction.

and, if such criminal proceeding be instituted on a false charge of an offence punishable with death, transportation for life, or imprisonment for seven years or

* In s. 211, the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

212.* Whenever an offence has been committed, Harbours of— whoever harbours† or conceals a person whom he knows or has reason to believe to be the offender with the intention of screening him from legal punishment,

Ct. of Ses.,
Presy. Mag.
or Mag. of
1st class—
Cognizable,
Warrant,
Bailable,
Not comp.

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine;

and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

Ditto.

and, if the offence is punishable with imprisonment which may extend to one year, and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

Presy. Mag.
or Mag. of
1st class,
or Court by
which of-
fence is
triable,
Cognizable,
Warrant,
Bailable,
Not comp.

‘Offence’ in this section includes any act committed at any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460; and every such act shall,

* In s. 212, the word “offence” has the same meaning when the thing punishable under the special or local law as defined in ss. 41 and 42 is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—*See* s. 40, *supra*.

† As to meaning of “harbour,” *see* s. 216B, *infra*.

for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in British India*.

Exception.—This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

Illustration.

A, knowing that *B* has committed dacoity, knowingly conceals *B* in order to screen him from legal punishment: Here, as *B* is liable to transportation for life, *A* is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

Ct. of Ses.
Uncog.
Warrant.
Bailable.
Not comp.

213.† Whoever accepts or attempts to obtain, or agrees to accept, any gratification for himself or any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st class.

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

Presy. Mag.
or Mag. of
1st class, or
Court by
which of-
fence is tri-
able.

and, if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

* This paragraph has been inserted by the Indian Criminal Law Amendment Act (III. of 1894), s. 7.

† In s. 213, the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

For Exception to s. 213, see s. 214, *Except., infra*.

and, if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

214.* Whoever gives or causes, or offers or agrees to give or cause, any gratification to any person, or to restore, or cause the restoration of, any property to any person, in consideration of that person's concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,

Ct. of Ses.
Uncog.
Warrant.
Bailable
Not comp

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

and, if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st class.

and, if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

Presy. Mag.,
or Mag. of
1st class, or
Court by
which of-
fence is
triable.

* In s. 214, the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in . 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

Exception.—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded.*

Illustrations.—[*Repealed by the old Criminal Procedure Code (Act X. of 1882).*]

Presy. Mag.
or Mag. of
1st class.
Unrecog.
Warrant.
Bailable.
Not comp.

215. Whoever takes, or agrees or consents to take, any gratification under pretence or on account of helping any person to recover any moveable property, of which he shall have been deprived by any offence punishable under this Code, shall, unless he uses all means in his power to cause the offender to be apprehended and convicted of the offence, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st class.
Cognizable.
Warrant.
Bailable.
Not comp.

216.† Whenever any person convicted of, or charged with, an offence, being in lawful custody for that offence, escapes from such custody, or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours‡ or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say—

if the offence for which the person was in custody or if a capital offence; is ordered to be apprehended is punishable with death, he shall be

* This Exception to s. 214 has been substituted by the Indian Penal Code Amendment Act (VIII. of 1882), s. 6, for the one originally enacted.

† In s. 216 the word "offence" has the same meaning when the thing punishable under the special or local law as defined in ss. 41 and 42 is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—*See s. 40, supra.*

‡ As to meaning of "harbour," see s. 216B, *infra*.

punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if the offence is punishable with transportation for life or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine;

and, if the offence is punishable with imprisonment which may extend to one year, and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

"Offence" in this section includes also any act or omission of which a person is alleged to have been guilty out of British India, which, if he had been guilty of it in British India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in British India; and every such act or omission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in British India.*

Exception.—This provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.

216A.† Whoever, knowing or having reason to believe that any persons are about to commit, or have recently committed, robbery or dacoity, harbours‡ them or any of them with the intention of facilitating the commission of such robbery or dacoity, or of screening them or any of them from

Ct. of Ses.
Presy. Mag.
or Mag. of
1st class.
Cognizable.
Warrant.
Bailable.
Not comp.

Presy. Mag.
or Mag. of
1st class.
Court by
which offence is tri-
able.
Cognizable.
Warrant.
Bailable.
Not comp.

Ct. of Ses.
Presy. Mag.
or Mag. of
1st class.
Cognizable.
Warrant.
Bailable.
Not comp.

* This paragraph in s. 216 has been inserted by the Indian Criminal Law Amendment Act (X. of 1886), s. 23.

† S. 216A has been inserted by the Indian Criminal Law Amendment Act (III. of 1894), s. 8.

‡ For the definition of 'harbour,' see s. 216B (*next following*).

punishment, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—For the purposes of this section, it is immaterial whether the robbery or dacoity is intended to be committed, or has been committed, within or without British India.

Exception.—This provision does not extend to the case in which the harbour is by the husband or wife of the offender.

216B.* In sections 212, 216, and 216A, the word ‘harbour’ includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition, or means of conveyance, or the assisting a person in any way to evade apprehension.

Presy. Mag.
or Mag. of
1st or 2nd
class.
Uncog.
Summons.
Bailable.
Not comp.

217. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ct. of Ses.
Uncog.
Warrant.
Bailable.
Not comp.

218. Whoever, being a public servant, and being, as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with in-

* S. 216B has been inserted by the Indian Criminal Law Amendment Act (III, of 1894), s. 8.

tent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public, or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

219. Whoever, being a public servant, corruptly or maliciously makes or pronounces, in any stage of a judicial proceeding, any report, order, verdict, or decision, which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Public servant in judicial proceeding corruptly making report, &c., contrary to law.

Ct. of Ses. Uncog. Warrant. Bailable. Not comp.

220. Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or to confinement, or keeps any person in confinement, in the exercise of that authority, knowing that, in so doing, he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Commitment for trial or confinement by person having authority who knows that he is acting contrary to law.

Ditto.

221.* Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with, or liable to be apprehended for, an offence, inten-

Intentional omission to apprehend on the part of public servant bound to apprehend.

Ditto.

* In s. 221, the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

tionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping, or attempting to escape, from such confinement, shall be punished as follows, that is to say—

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with death; or

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st class.

with imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with transportation for life or imprisonment for a term which may extend to ten years; or

Presy. Mag.,
or Mag. of
1st or 2nd
class.

with imprisonment of either description for a term which may extend to two years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with imprisonment for a term less than ten years.

Ct. of Ses.
Uncog.
Warrant.
Not bail-
able.
Not comp.

222.* Whoever, being a public servant, legally bound, as such public servant, to apprehend, or to keep in confinement, any person under sentence of a Court of Justice for any offence, "or lawfully committed to custody,"† intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such per-

* In s. 222, the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

† In s. 222, the words quoted have been inserted by the Indian Penal Code Amendment Act (XXVII. of 1870), s. 8.

son in escaping, or attempting to escape, from such confinement, shall be punished as follows, that is to say—

with transportation for life, or with imprisonment of either description for a term which may extend to fourteen years, with or without fine, if the person in confinement, or who ought to have been apprehended, is under sentence of death ; or

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, or by virtue of a commutation of such sentence, to transportation for life or penal servitude for life, or to transportation or penal servitude or imprisonment for a term of ten years or upwards ; or

with imprisonment of either description for a term which may extend to three years, or with fine, or with both, if the person in confinement, or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, to imprisonment for a term not extending to ten years, “or if the person was lawfully committed to custody.”*

223.† Whoever, being a public servant, legally bound, as such public servant, to keep in confinement any person charged with, or convicted of, any offence, “or lawfully committed to custody,”* negligently suffers such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

* In ss. 222 and 223, the words quoted have been inserted by the Indian Penal Code Amendment Act (XXVII. of 1870), s. 8.

† In s. 223, the word “offence” denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

Presy. Mag.
or Mag. of
1st or 2nd
class.
Cognizable.
Warrant.
Bailable.
Not comp.

224.* Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged, or of which he has been convicted, or escapes, or attempts to escape, from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation.—The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.

Utter.

225.* Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues, or attempts to rescue, any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

Ct. of Ses.
Presy. Mag.
or Mag. of
1st class.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with, or liable to be apprehended for, an offence punishable with transportation for life or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

Ct. of Ses.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

or, if the person to be apprehended or rescued, or attempted to be rescued, is charged with, or liable to be apprehended for, an offence punishable with death, shall

* In ss. 224 and 225, the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

or, if the person to be apprehended or rescued, or attempted to be rescued, is liable, under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to transportation for life, or to transportation, penal servitude, or imprisonment for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

Ct. of Ses.
Cognizable
Warrant.
Not bail-
able.
Not comp.

or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Ditto.

225A.* Whoever, being a public servant, legally bound, as such public servant, to apprehend or to keep in confinement any person in any case not provided for in section 221, section 222, or section 223, or in any other law for the time being in force, omits to apprehend that person, or suffers him to escape from confinement, shall be punished—

As to cl. a :
Ct. of Ses.,
Presy Mag.,
or Mag. of
1st class.
Unlog.
Warrant.
Bailable.
Not comp.

(a) if he does so intentionally—with imprisonment of either description for a term which may extend to three years, or with fine, or with both ; and,

As to cl. b :
Presy. Mag.,
or Mag. of
1st or 2nd
class.
Unlog.
Summons.
Bailable.
Not comp.

(b) if he does so negligently—with simple imprisonment for a term which may extend to two years, or with fine, or with both.

* S. 225A has been substituted by the Indian Criminal Law Amendment Act (X. of 1886), s. 24 (i), for s. 225A as inserted by the Indian Penal Code Amendment Act (XXVII. of 1870), s. 9.

Chaps. IV. and V. of the Code apply to offences punishable under ss. 225A and 225B.—See the Indian Penal Code Amendment Act (XXVII. of 1870), s. 13, as amended by the Repealing and Amending Act (XII. of 1891).

Presy. Mag.
or Mag. of
1st or 2nd
class.
Cognizable.
Warrant.
Bailable.
Not comp.

225B.* Whoever, in any case not provided for in section 224 or section 225, or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself, or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Ct. of Ses.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

226. Whoever, having been lawfully transported, returns from such transportation, the term of such transportation not having expired, and his punishment not having been remitted, shall be punished with transportation for life, and shall also be liable to fine, and to be imprisoned with rigorous imprisonment for a term not exceeding three years before he is so transported.

Ct. by which
original of-
fence was
triable.
Uncog.
Summons.
Not bail-
able.
Not comp.

227. Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced if he has already suffered no part of that punishment, and, if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

* S. 225B has been substituted by the Indian Criminal Law Amendment Act (X. of 1886), s. 24 (i), for s. 225A as inserted by the Indian Penal Code Amendment Act (XXVII. of 1870), s. 9.

Chaps IV. and V. of the Code apply to offences punishable under ss 225A and 225B.—See the Indian Penal Code Amendment Act (XXVII. of 1870), s. 13, as amended by the Repealing and Amending Act (XII. of 1891).

228. Whoever intentionally offers any insult, or causes any interruption, to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Intentional insult or interruption to public servant sitting in any stage of a judicial proceeding.

Ct. in which offence committed, subject to provisions of ch. 35. Uncog. Summons. Bailable. Not comp. Sanction.

229. Whoever, by personation or otherwise, shall intentionally cause or knowingly suffer himself to be returned, empannelled, or sworn as a juryman or assessor in any case in which he knows that he is not entitled by law to be so returned, empannelled, or sworn, or knowing himself to have been so returned, empannelled, or sworn contrary to law, shall voluntarily serve on such jury, or as such assessor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Personation of a juror or assessor.

Presy. Mag. or Mag. of 1st class. Uncog. Summons. Bailable. Not comp.

CHAPTER XII.*

OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

230. Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used.†

"Coin" defined.

Queen's coin is metal stamped and issued by the authority of the Queen, or by the authority of the Government of India, or of the Government of any Presidency, or of any Government in the Queen's dominions, in order to be used as money; and metal which has been so stamped

Queen's coin.

* As to enhanced punishment for second conviction for certain offences under Ch. XII., see s. 75. *supra*.

† In s. 230, the first paragraph has been substituted, by the Indian Penal Code Amendment Act (XIX. of 1872), for the one originally enacted.

and issued shall continue to be the Queen's coin for the purposes of this chapter, notwithstanding that it may have ceased to be used as money.*

Illustrations.

(a.) Cowries are not coin.

(b.) Lumps of unstamped copper, though used as money are not coin.

(c.) Medals are not coin, inasmuch as they are not intended to be used as money.

(d.) The coin denominated as the Company's rupee is the Queen's coin.

(e.)† The 'Farukhabad' rupee, which was formerly used as money under the authority of the Government of India, is Queen's coin, although it is no longer so used.

Ct. of Ses.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

231. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—A person commits this offence who, intending to practise deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

Comment.—Counterfeit coin means coin not genuine, but resembling, or apparently intended to resemble or pass for, genuine coin.

Ditto .

232. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

* In s. 230, the second paragraph has been substituted by the Indian Penal Code Amendment Act (VI. of 1896), s. 1 (1), for the one which had been substituted for the original by the Indian Penal Code Amendment Act (XIX. of 1872).

† In s. 230, III. (e) has been added by the Indian Penal Code Amendment Act (VI. of 1896), s. 1 (2).

233. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells, disposes of, any die or instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st class.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

234. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells, or disposes of, any die or instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.,
Cognizable.
Warrant.
Not bail-
able.
Not comp.

235. Whoever is in possession of any instrument or material for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine,

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st class.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

and, if the coin to be counterfeited is the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses.,
Cognizable.
Warrant.
Not bail-
able.
Not comp.

236. Whoever, being within British India, abets the counterfeiting of coin out of British India, shall be punished in the same manner as if he abetted the counterfeiting of such coin within British India.

Abetting in India
the counterfeiting out
of India of coin.

Ditto.

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st class.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

237. Whoever imports into British India, or exports therefrom, any counterfeit coin, knowing or having reason to believe that the same is counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Ct. of Ses.,
Cognizable.
Warrant.
Not bail-
able.
Not comp.

238. Whoever imports into British India, or exports therefrom, any counterfeit coin which he knows, or has reason to believe to be a counterfeit of the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st class.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

239. Whoever, having any counterfeit coin, which, at the time when he became possessed of it, he knew to be counterfeit, fraudulently, or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Ditto.

240. Whoever, having any counterfeit coin which is a counterfeit of the Queen's coin, and which, at the time when he became possessed of it, he knew to be a counterfeit of the Queen's coin, fraudulently, or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Presy. Mag.,
or Mag. of
1st or 2nd
class.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

241. Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin which he knows to be counterfeit, but which he did not know to be counterfeit at the

time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

Illustration.

A, a coiner, delivers counterfeit Company's rupees to his accomplice *B* for the purpose of uttering them. *B* sells the rupees to *C*, another utterer, who buys them, knowing them to be counterfeit. *C* pays away the rupees for goods to *D*, who receives them, not knowing them to be counterfeit. *D*, after receiving the rupees, discovers that they are counterfeit, and pays them away as if they were good: Here *D* is punishable only under this section, but *B* and *C* are punishable under section 239 or 240, as the case may be.

242. Whoever fraudulently, or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st class.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

243. Whoever fraudulently, or with intent that fraud may be committed, is in possession of counterfeit coin, which is a counterfeit of the Queen's coin, having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ditto.

244. Whoever, being employed in any mint lawfully established in British India, does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or

Ct. of Ses.,
Cognizable.
Warrant.
Not bail-
able.
Not comp.

Person employed in mint causing coin to be of different weight or composition from that fixed by law.

composition from the weight or composition fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.
Cognizable
Warrant.
Not bail-
able.
Not comp.

245. Whoever, without lawful authority, takes out of any mint lawfully established in British India any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.,
Presy. Mag.
or Mag. of
1st class.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

246. Whoever fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation.—A person who scoops out part of the coin, and puts anything else into the cavity, alters the composition of that coin.

Ditto.

247. Whoever fraudulently or dishonestly performs on any of the Queen's coin any operation which diminishes the weight or alters the composition of that coin shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ditto.

248. Whoever performs on any coin any operation which alters the appearance of that coin with the intention that the said coin shall pass as a coin of a different description shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

249. Whoever performs on any of the Queen's coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Altering appearance of Queen's coin with intent that it shall pass as coin of different description.

Ct. of Ses.
Presy. Mag.
or Mag. of
1st class. of
Cognizable
Warrant.
Not bail-
able.
Not comp

250. Whoever, having coin in his possession with respect to which the offence defined in section 246 or 248 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently, or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Delivery of coin possessed with knowledge that it is altered.

Ditto.

251. Whoever, having coin in his possession with respect to which the offence defined in section 247 or 249 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently, or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Delivery of Queen's coin possessed with knowledge that it is altered.

Ditto.

252. Whoever fraudulently, or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 246 or 248 has been committed, having known at the time of becoming

Possession of coin by person who knew it to be altered when he became possessed thereof.

Ditto.

ing possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st class.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

253. Whoever fraudulently, or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 247 or 249 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Presy. Mag.
or Mag. of
1st or 2nd
class.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

254. Whoever delivers to any other person as genuine, or as a coin of a different description from what it is, or attempts to induce any person to receive as genuine, or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in section 246, 247, 248, or 249, has been performed, but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed or attempted to be passed.

Ct. of Ses.
Cognizable.
Warrant.
Bailable.
Not comp.

255. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by Government* for the purpose of revenue, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

* As to meaning of "Government," see s. 263A (4), *infra*.

Explanation.—A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

Stamp.—The word includes Post office stamp.

256. Whoever has in his possession any instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government* for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Having possession of instrument or material for counterfeiting Government stamp.

Ct. of Ses. Cognizable. Warrant. Bailable. Not comp.

257. Whoever makes, or performs any part of the process of making, or buys, or sells, or disposes of any instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government* for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Making or selling instrument for counterfeiting Government stamp.

Ditto.

258. Whoever sells, or offers for sale, any stamp which he knows or has reason to believe to be a counterfeit of any stamp issued by Government* for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Sale of counterfeit Government stamp.

Ditto.

259. Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government* for the purpose of revenue, intending to use

Having possession of counterfeit Government stamp.

Ct. of Ses. Presy. Mag. or Mag. of 1st class. Cognizable. Warrant. Bailable. Not comp.

* As to meaning of "Government," see s. 263A (4), *infra*.

or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.
Presy. Mag.
or Mag. of
1st class.
Cognizable.
Warrant.
Bailable.
Not comp.

260. Whoever uses as genuine any stamp, knowing it to be a counterfeit of any stamp issued by Government* for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

§ 110.

261. Whoever fraudulently, or with intent to cause loss to Government, removes or effaces from any substance bearing any stamp issued by Government* for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document a stamp which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Presy. Mag.
or Mag. of
1st or 2nd
class.
Cognizable.
Warrant.
Bailable.
Not comp.

262. Whoever fraudulently, or with intent to cause loss to Government,* uses for any purpose a stamp issued by Government* for the purpose of revenue, which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

* As to meaning of "Government," see s. 263A (4) *infra*.

263. Whoever fraudulently, or with intent to cause loss to Government,* erases or removes from a stamp issued by Government* for the purpose of revenue any mark put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession, or sells or disposes of, any such stamp from which such mark has been erased or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st class.
Cognizable.
Warrant.
Bailable.
Not comp.

Prohibition of fictitious stamps.

263A. † (1) Whoever—

Presy. Mag.
or Mag. of
1st class.
Cognizable.
Warrant.
Bailable.
Not comp.

(a) makes, knowingly utters, deals in, or sells any fictitious stamps, or knowingly uses for any postal purpose any fictitious stamp, or

(b) has in his possession, without lawful excuse, any fictitious stamp, or

(c) makes, or, without lawful excuse, has in his possession, any die, plate, instrument, or materials for making any fictitious stamp,

shall be punished with fine may extend to two hundred rupees.

(2) Any such stamp, die, plate, instrument, or materials in the possession of any person for making any fictitious stamp may be seized, and shall be forfeited.

(3) In this section 'fictitious stamps' means any stamp falsely purporting to be issued by Government for the purpose of denoung a rate of postage, or any facsimile or imitation or representation, whether on paper or otherwise, of any stamp issued by Government for that purpose.

(4) In this section and also in sections 255 to 263 (both inclusive), the word 'Government,' when used in connec-

* As to meaning of "Government," see s. 263A (4), *infra*.

† S. 263A has been added by the Indian Criminal Law Amendment Act (III. of 1895), s. 2.

tion with, or in reference to, any stamp issued for the purpose of denoting a rate of postage, shall, notwithstanding anything in section 17, be deemed to include the person or persons authorized by law to administer executive government in any part of India, and also in any part of Her Majesty's dominions, or in any foreign country.

CHAPTER XIII.

OF OFFENCES RELATING TO WEIGHTS AND MEASURES.

Presy. Mag.
or Mag. of
1st or 2nd
class.
Uncog.
Summons.
Bailable.
Not comp.
Ditto.

264. Whoever fraudulently uses any instrument for weighing, which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

235. Whoever fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity, as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Ditto.

266. Whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be false, and intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Ditto.

267. Whoever makes, sells, or disposes of any instrument for weighing, or any weight, or any measure of length or capacity, which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XIV.

OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY, AND MORALS.

268.* A person is guilty of a public nuisance who does any act, or is guilty of an illegal omission, which causes any common injury, danger, or annoyance to the public, or to the people in general, who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

269. Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Presy Mag-
or Mag. of
1st or 2nd
class.
(Cognizable
Summons,
Bailable.
Not comp.

270. Whoever maliciously does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ditto.

* The definition of "public nuisance" here given applies in the case of all Acts of the Governor-General in Council and Regulations under Stat. 33 Vict., c. 3, s. 1, made after 14th January 1887.—See the General Clauses Act (X. of 1897), s. 3. (44) and s. 4. (2).

As to procedure in case of public nuisances, see the Code of Criminal Procedure (Act V. of 1898), Ch. X., s. 133, *et seq.*

Presy. Mag.
or Mag. of
1st or 2nd
class. " "
Uncog.
Summons.
Bailable.
Not comp.

271. Whoever knowingly disobeys any rule made and promulgated by the Government of India, or by any Government, for Disobedience to quarantine-rule. putting any vessel into a state of quarantine,* or for regulating the intercourse of vessels in a state of quarantine with the shore, or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Ditto.

272.† Whoever adulterates any article of food or drink so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Ditto.

273.† Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Ditto.

274.† Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or

* For power to make rules relating to quarantine, see the Indian Quarantine Act (I. of 1870).

† For power to order destruction of the food or other thing in respect of which a conviction is had under ss. 272-274, see the Code of Criminal Procedure (Act V. of 1898), s. 521 (2).

knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

275.* Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes, as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Presy. Mag.
or Mag. of
1st or 2nd
class.
Uncog.
Summons.
Bailable.
Not comp.

276. Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary different drug or preparation, as a medicinal preparation, any drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Ditto.

277. Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Any Mag.
Cognizable.
Summons.
Bailable.
Not comp.

* For power to order destruction of the food or other thing in respect of which a conviction is had under s. 275, see the Code of Criminal Procedure (Act V. of 1898), s. 521 (2).

Any Mag.
Uncog.
Summons.
Bailable.
Not comp.

278. Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood, or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

Any Mag.
Cognizable.
Summons.
Bailable.
Not Comp.

279. Whoever drives any vehicle, or rides, on any public way, in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Presy. Mag.
or Mag. of
1st or 2nd
class.
Cognizable.
Summons.
Bailable.
Not comp.

280. Whoever navigates any vessel in a manner so rash or negligent as to endanger human life, or to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Ct. of Ses.
Cognizable.
Warrant.
Bailable.
Not comp.

281. Whoever exhibits any false light, mark, or buoy, intending or knowing it to be light, mark, or buoy. likely that such exhibition will mislead any navigator, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Presy. Mag.
or Mag. of
1st or 2nd
class.
Cognizable.
Summons.
Bailable.
Not comp.

282. Whoever knowingly or negligently conveys, or causes to be conveyed, for hire, any person by water, in any vessel, when that vessel is in such a state or so loaded as to endanger the life of that person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

283. Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction, or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred rupees.

Danger or obstruction in a public way or navigation.

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Summons. Bailable. Not comp.

284. Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any person,

Negligent conduct with respect to poisonous substance.

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.

or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against probable danger to human life from such poisonous substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

285. Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,

Negligent conduct with respect to fire or combustible matter.

Any Mag. Cognizable. Summons. Bailable. Not comp.

or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

286. Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,

Negligent conduct with respect to explosive substance.

Ditto.

or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Presy. Mag.
or Mag. of
1st or 2nd
class.
Uncog.
Summons.
Bailable.
Not comp.

287. Whoever does, with any machinery, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person. Negligent conduct with respect to machinery. or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Ditto.

288. Whoever, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Any Mag.
Cognizable.
Summons.
Bailable.
Not comp.

289. Whoever knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

290. Whoever commits a public nuisance in any case not otherwise punishable by this Code shall be punished with fine which may extend to two hundred rupees.

Punishment for public nuisance in cases not otherwise provided for.

Any Mag. Uncog. Summons. Bailable Not comp.

291. Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

Consequence of nuisance after injunction to discontinue.

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Summons. Bailable. Not comp.

292.* Whoever sells or distributes, imports, or prints for sale or hire, or wilfully exhibits to public view, any obscene book, pamphlet, paper, drawing, painting, representation, or figure, or attempts or offers so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Sale, &c., of obscene books, &c.

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.

Exception.—This section does not extend to any representation sculptured, engraved, painted, or otherwise represented, on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

293.* Whoever has in his possession any such obscene book or other thing as is mentioned in the last-preceding section for the purpose of sale, distribution, or public exhibition, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Having in possession obscene book, &c., for sale or exhibition.

Ditto.

* For power to order the destruction of copies of the thing in respect of which a conviction under s. 292 or s. 293 is had, see the Code of Criminal Procedure (Act V. of 1893), s. 521.

Presy. Mag.
or Mag. of
1st or 2nd
class.
Cognizable.
Warrant.
Bailable.
Not comp.

Obscene acts and
songs.

294.* Whoever, to the annoyance
of others—

(a) does any obscene act in any public place, or

(b) sings, recites, or utters any obscene song, ballad,
or words in or near any public place,

shall be punished with imprisonment of either description
for a term which may extend to three months, or with
fine, or with both.

Any Mag.
Uncog.
Summons.
Bailable.
Not comp.
Sanction.

294A.† Whoever keeps any office or place for the
purpose of drawing any lottery not
authorized by Government shall be
punished with imprisonment of either description for a term
which may extend to six months, or with fine, or with both ;

and whoever publishes any proposal to pay any sum, or
to deliver any goods, or to do or forbear doing anything
for the benefit of any person, on any event or contingency
relative or applicable to the drawing of any ticket, lot,
number, or figure in any such lottery, shall be punished
with fine which may extend to one thousand rupees.

CHAPTER XV.

OF OFFENCES RELATING TO RELIGION.

Presy. Mag.
or Mag. of
1st or 2nd
class.
Cognizable.
Summons.
Bailable.
Not comp.

295. Whoever destroys, damages, or defiles any
place of worship, or any object held
sacred by any class of persons, with
the intention of thereby insulting the
religion of any class of persons, or
with the knowledge that any class of persons is likely to

* S. 294 has been substituted for the original by the Indian
Criminal Law Amendment Act (III. of 1895), s. 3.

† S. 294A has been inserted by the Indian Penal Code
Amendment Act (XXVII. of 1870), s. 10.

As to authority for instituting prosecutions under s. 294A,
see the Code of Criminal Procedure (Act V. of 1898), s. 196.

Chaps. IV., V., and XXIII. of the Code apply to offences
punishable under s. 294A.—See the Indian Penal Code Amend-
ment Act (XXVII. of 1870), s. 13.

consider such destruction, damage, or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

296. Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremonies shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Presy. Mag.
or Mag. of
1st or 2nd
class.
Cognizable.
Summons.
Bailable.
Not comp.

297. Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby,

Ditto.

commits any trespass in any place of worship, or on any place of sepulture, or any place set apart for the performance of funeral rites, or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

298.* Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight

Presy. Mag.
or Mag. of
1st or 2nd
class.
Uncog.
Summons.
Bailable.
Comp.

* Offences punishable under s. 298 are compoundable.—
See the Code of Criminal Procedure, (Act V. of 1898), s. 345.
As to the stage of proceedings at which no composition is allowed without the leave of the Court, see cl. (5) of s. 345 aforesaid.

of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XVI.*

OF OFFENCES AFFECTING THE HUMAN BODY.

Of Offences affecting Life.

299. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely, by such act, to cause death, commits the offence of culpable homicide.

Comment.—There is a clear distinction between a person causing death by doing an act "with the knowledge that he is likely by such act to cause death," which is culpable homicide within the definition in s. 299 Indian Penal Code, and causing death by act known by the person doing it to be "so immensely dangerous that it must in all probability cause death or such bodily injury as is likely to cause death" which is murder under clause (4) of s. 300. The former includes the latter but the two descriptions are by no means co-extensive.

Illustrations.

(a.) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is

* As to duty to give information of offences punishable under s. 302, 303, or 304, see the Code of Criminal Procedure (Act V. of 1898), s. 44. See also (as to offences punishable under s. 302 or 304) s. 45 of the Code, and (as to murder and culpable homicide not amounting to murder) s. 45 of the Code as amended for Burma by Upper Burma Village Regulation (XIV. of 1887), s. 4, and the Lower Burma Village Act (III. of 1889), s. 5.

As to punishment for offences under ss. 302, 304, 307 and 308 enquired into by a Council of Elders, in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

likely to be thereby caused. *Z*, believing the ground to be firm, treads on it, falls in, and is killed: *A* has committed the offence of culpable homicide.

(*b*) *A* knows *Z* to be behind a bush. *B* does not know it. *A*, intending to cause, or knowing it to be likely to cause, *Z*'s death, induces *B* to fire at the bush. *B* fires, and kills *Z*: Here *B* may be guilty of no offence; but *A* has committed the offence of culpable homicide.

(*c*.) *A*, by shooting at a fowl with intent to kill and steal it, kills *B*, who is behind a bush, *A* not knowing that he was there: Here, although *A* was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill *B*, or to cause death by doing an act that he knew was likely to cause death.

Explanation 1.—A person who causes bodily injury to another, who is labouring under a disorder, disease, or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although, by resorting to proper remedies and skilful treatment, the death might have been prevented.

Explanation 3.—The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child if any part of that child has been brought forth, though the child may not have breathed or been completely born.

300. Except in the cases hereinafter excepted, culpable homicide is murder if the act by which the death is caused is done with the intention of causing death, or,

2ndly, if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or,

3rdly, if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient, in the ordinary course of nature, to cause death, or,

4thly, if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Intention.—By intention is meant the expectation of the consequence in question.

Illustrations.

(a) *A* shoots *Z* with the intention of killing him. *Z* dies in consequence: *A* commits murder.

(b.) *A*, knowing that *Z* is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. *Z* dies in consequence of the blow: *A* is guilty of murder, although the blow might not have been sufficient, in the ordinary course of nature, to cause the death of a person in a sound state of health. But, if *A*, not knowing that *Z* is labouring under any disease, gives him such a blow as would not, in the ordinary course of nature, kill a person in a sound state of health, here *A*, although he may intend to cause bodily injury, is not guilty of murder if he did not intend to cause death or such bodily injury as, in the ordinary course of nature, would cause death.

(c.) *A* intentionally gives *Z* a sword cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. *Z* dies in consequence: Here, *A* is guilty of murder, although he may not have intended to cause *Z*'s death.

(d.) *A*, without any excuse, fires a loaded cannon into a crowd of persons, and kills one of them: *A* is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Exception 1.—Culpable homicide is not murder if

When culpable homicide is not murder. the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who

gave the provocation, or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:*

Firstly—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person:

Secondly—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant:

Thirdly—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Illustrations.

(a.) *A*, under the influence of passion excited by a provocation given by *Z*, intentionally kills *Y*, *Z*'s child: This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b.) *Y* gives grave and sudden provocation to *A*. *A*, on this provocation, fires a pistol at *Y*, neither intending nor knowing himself to be likely to kill *Z*, who is near him, but out of sight. *A* kills *Z*: Here *A* has not committed murder, but merely culpable homicide.

(c.) *A* is lawfully arrested by *Z*, a bailiff. *A* is excited to sudden and violent passion by the arrest, and kills *Z*. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d.) *A* appears as a witness before *Z*, a Magistrate. *Z* says that he does not believe a word of *A*'s deposition, and that *A* has perjured himself. *A* is moved to sudden passion by these words, and kills *Z*. This is murder.

* As to the application of these provisos in the case of causing hurt on provocation, see s. 335, *Explanation, infra*.

(e.) *A* attempts to pull *Z*'s nose. *Z*, in the exercise of the right of private defence, lays hold of *A* to prevent him from doing so. *A* is moved to sudden and violent passion in consequence, and kills *Z*: This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.

(f.) *Z* strikes *B*. *B* is, by this provocation, excited to violent rage. *A*, a bystander, intending to take advantage of *B*'s rage, and to cause him to kill *Z*, puts a knife into *B*'s hand for that purpose. *B* kills *Z* with the knife: Here *B* may have committed only culpable homicide, but *A* is guilty of murder.

Exception 2.—Culpable homicide is not murder if the offender, in the exercise in good faith, of the right of private defence of person or property, exceeds the power given to him by law, and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration.

Z attempts to horsewhip *A*, not in such a manner as to cause grievous hurt to *A*. *A* draws out a pistol. *Z* persists in the assault. *A*, believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots *Z* dead: *A* has not committed murder, but only culpable homicide.

Exception 3.—Culpable homicide is not murder if the offender, being a public servant, or aiding a public servant, acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant, and without ill-will towards the person whose death is caused.

Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offender's having taken undue advantage, or acted in a cruel or unusual manner.

Explanation.—It is immaterial in such cases which party offers the provocation, or commits the first assault.

Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death, or takes the risk of death, with his own consent.

Illustration.

A, by instigation voluntarily causes *Z*, a person under eighteen years of age, to commit suicide: Here, on account of *Z*'s youth, he was incapable of giving consent to his own death: *A* has therefore abetted murder.

301. If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

302. Whoever commits murder shall be punished with death or transportation for life, and shall also be liable to fine.

Ct. of Ses.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

303. Whoever, being under sentence of transportation for life, commits murder, shall be punished with death.

Ditto.

304. Whoever commits culpable homicide not amounting to murder shall be punished with transportation for life or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

Ditto.

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st class.
Cognizable
Warrant.
Bailable.
Not comp.

304A.* Whoever causes the death of any person by causing death by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ct. of Ses.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

305. If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication commits suicide, whoever abets the commission of such suicide shall be punished with death or transportation for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

Ditto.

306. If any person commits suicide, whoever abets the commission of such suicide shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ditto.

307. Whoever does any act with such intention or knowledge, and under such circumstances, that, if he, by that act, caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to transportation for life, or to such punishment as is hereinbefore mentioned.

* S. 304A has been inserted by the Indian Penal Code Amendment Act (XXVII. of 1870), s. 12. Chaps. IV., V., and XXI. of the Code apply to an offence punishable under s. 304A.—See Act XXVII. of 1870, s. 13.

When any person offending under this section is under sentence of transportation for life, he may, if hurt is caused, be punished with death.*

Attempts by life-convicts.

Ct. of Ses.
Cognizable
Warrant.
Not Bail-
able.
Not comp.

Illustrations.

(a.) *A* shoots at *Z* with intention to kill him under such circumstances that, if death ensued *A* would be guilty of murder : *A* is liable to punishment under this section.

(b.) *A*, with the intention of causing the death of a child of tender years, exposes it in a desert place : *A* has committed the offence defined in this section, though the death of the child does not ensue

(c.) *A*, intending to murder *Z*, buys a gun, and loads it. *A* has not yet committed the offence. *A* fires the gun at *Z* : He has committed the offence defined in this section ; and if, by such firing, he wounds *Z*, he is liable to the punishment provided by the latter part of the first paragraph of† this section.

(d.) *A*, intending to murder *Z* by poison, purchases poison, and mixes the same with food which remains in *A*'s keeping. *A* has not yet committed the offence defined in this section. *A* places the food on *Z*'s table, or delivers it to *Z*'s servants to place it on *Z*'s table : *A* has committed the offence defined in this section.

308. Whoever does any act with such intention or knowledge, and under such circumstances, that, if he, by that act, caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both ; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Ct. of Ses.
Cognizable
Warrant.
Bailable.
Not comp.

This clause has been added by the Indian Penal Code Amendment Act (XXVII. of 1870), s. 11.

† The words italicized have been inserted by the Repealing and Amending Act (XII. of 1891).

Illustration.

A, on grave and sudden provocation, fires a pistol at Z under such circumstances that, if he thereby caused death, he would be guilty of culpable homicide not amounting to murder: A has committed the offence defined in this section.

Presy. Mag.
or Mag. of
1st or 2nd
class.
Cognizable.
Warrant.
Bailable.
Not comp.

309. Whoever attempts to commit suicide, and does Attempt to commit any act towards the commission of suicide. such offence, shall be punished with simple imprisonment for a term which may extend to one year, "or with fine, or with both."*

310. Whoever, at any time after the passing of this Act, shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing by means of, or accompanied with, murder, is a thug.

Ct. of Ses.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

311. Whoever is a thug shall be punished with transportation for life, and shall also be liable to fine.

Of the Causing of Miscarriage; of Injuries to Unborn Children; of the Exposure of Infants; and of the Concealment of Births.

Ct. of Ses.
Uncog.
Warrant.
Bailable.
Not comp.

312. Whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both: and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

* In s. 309, the words quoted have been substituted by the Indian Penal Code Amendment Act (VIII. of 1882), s. 7, for the words, "and shall also be liable to fine."

Explanation.—A woman who causes herself to miscarry is within the meaning of this section.

313. Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses.
Uncog.
Warrant.
Not bail-
able.
Not comp.

314. Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

Death caused by act done with intent to cause miscarriage. Ditto.

and, if the act is done without the consent of the woman, shall be punished either with transportation for life, or with the punishment above mentioned.

If act done without woman's consent. Ditto.

Explanation.—It is not essential to this offence that the offender should know that the act is likely to cause death.

315. Whoever, before the birth of any child, does any act with the intention of thereby preventing that child from being born alive, or causing it to die after its birth, and does, by such act, prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

Act done with intent, to prevent child being born alive, or to cause it to die after birth. Ditto.

316. Whoever does any act under such circumstances that, if he thereby caused death, he would be guilty of culpable homicide, and does, by such act, cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

Causing death of quick unborn child by act amounting to culpable homicide. Ditto.

child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Illustration.

A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured, but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused: A is guilty of the offence defined in this section.

Ct. of Ses.
Cognizable.
Warrant.
Bailable.
Not comp.

317. Whoever, being the father or mother of a child under the age of twelve years or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.—This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

Ct. of Ses.
Presy. Mag.
or Mag. of
1st or 2nd
class.
Cognizable.
Warrant.
Bailable.
Not comp.

318. Whoever, by secretly burying, or otherwise disposing of, the dead body of a child, whether such child die before or after, or during, its birth, intentionally conceals, or endeavours to conceal, the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

*Of Hurt.**

Hurt.

319. Whoever causes bodily pain, disease, or infirmity to any person is said to cause hurt.

* As to the application of ss. 327-331 to offences under special or local laws, see s. 40, *supra*.—See notes at the foot of next page.

Grievous hurt.

320. The following kinds of hurt only are designated as "grievous":—

First—Emasculation ;

secondly—permanent privation of the sight of either eye ;

thirdly—permanent privation of the hearing of either ear ;

fourthly—privation of any member or joint ;

fifthly—destruction or permanent impairing of the powers of any member or joint ;

sixthly—permanent disfiguration of the head or face ;

seventhly—fracture or dislocation of a bone or tooth ;

eighthly—any hurt which endangers life, or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.

321. Whoever does any act with the intention of there-
 Voluntarily causing by causing hurt to any person, or with
 hurt. the knowledge that he is likely there-
 by to cause hurt to any person, and does thereby cause hurt
 to any person, is said "voluntarily to cause hurt."

322. Whoever voluntarily causes hurt, if the hurt
 Voluntarily causing which he intends to cause, or knows
 grievous hurt. himself to be likely to cause, is

Offences punishable under ss. 323 and 334 are compoundable, and those punishable under ss. 324, 325, 335, 337, and 338 may be compounded with the permission of the Court.—*See the Code of Criminal Procedure (Act V. of 1898), s. 345.* As to stage of proceedings at which no composition is allowed without the leave of the Court, *see sub-s. (5) s. 345, aforesaid.*

As to whipping in a Punjab Frontier District or in Baluchistan for offences punishable under ss. 325 and 326, *see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 8.*

As to punishment for offences under ss. 325, 326, and 328, enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, *see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.*

grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt."

Explanation.—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt, and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt if, intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Illustration.

A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days: A has voluntarily caused grievous hurt.

Any Mag.
Uncog.
Summons.
Bailable.
Comp.

323. Whoever, except in the case provided for by section 334, voluntarily causes hurt shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st or 2nd
class.
Cognizable.
Summons.
Bailable.
Comp. when
permission
is given by
Court before
which prose-
cution pend-
ing.

324. Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing, or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Ditto.

325. Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description

for a term which may extend to seven years, and shall also be liable to fine.

326. Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing, or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses.,
Presv Mag.,
or Mag. of
1st class
Cognizable.
Summons.
Not bail-
able.
Not comp.

327.* Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal, or which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses.
Cognizable
Warrant.
Not bail-
able. 4
Not comp.

328.* Whoever administers to, or causes to be taken by, any person any poison or any stupefying, intoxicating, or unwholesome drug or other thing, with intent to cause hurt to such person, or with intent to commit, or to facilitate the commission of, an offence, or knowing it to be likely that he will thereby

Intro.

* In ss. 327 and 328, the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*

cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

329.* Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything that is illegal, or which may facilitate the commission of an offence, shall be punished with transportation for life or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses.
Cognizable.
Warrant.
Bailable.
Not comp.

330.* Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore, or to cause the restoration of, any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Illustrations.

(a.) *A*, a police-officer tortures *Z* in order to induce *Z* to confess that he committed a crime: *A* is guilty of an offence under this section.

(b.) *A*, a police-officer, tortures *B* to induce him to point out where certain stolen property is deposited: *A* is guilty of an offence under this section.

* In ss. 329 and 330, the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

(c.) *A*, a revenue-officer, tortures *Z* in order to compel him to pay certain arrears of revenue due from *Z*: *A* is guilty of an offence under this section.

(d.) *A*, a zemindar, tortures a raiyat in order to compel him to pay his rent: *A* is guilty of an offence under this section.

331.* Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore, or to cause the restoration of, any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

332. Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Ct. of Ses.,
Presy. Mag.
or Mag. of
1st class.
Cognizable.
Warrant.
Bailable.
Not comp.

333. Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any

Ct. of Ses.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

* In s. 331, the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Any Mag.
Uncog.
Summons.
Bailable.
Comp.

334. Whoever voluntarily causes hurt on grave and voluntarily causing sudden provocation,* if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Ct. of Ses.,
Presy. Mag.
or Mag. of
1st or 2nd
class.
Cognizable.
Summons.
Bailable.
Comp. when
permission
is given by
Court before
which pro-
secution is
pending.

335. Whoever “voluntarily”† causes grievous hurt on grave and sudden provocation,* if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both.

Explanation.—The last two sections are subject to the same provisos as *Exception 1*, section 300.

Any Mag.
Cognizable.
Summons.
Bailable.
Not comp.

336. Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two-hundred-and-fifty rupees, or with both.

* As to provocation in this and the following section (335), see *explanation* to the latter, *infra*.

† In s. 335, the word quoted has been inserted by the Indian Penal Code Amendment Act (VIII. of 1882), s. 8.

337. Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life or the personal safety of others shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Presy. Mag.
or Mag. of
1st or 2nd
class
Cognizable
Summons.
Bailable
Comp. when
permission
is given by
Court before
which pro-
secution is
pending
Ditto.

338. Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life or the personal safety of others shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

*Of Wrongful Restraint and Wrongful Confinement**

339. Whoever voluntarily obstructs any person, so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Exception.—The obstruction of a private way over land or water, which a person, in good faith, believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

Illustration.

A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing: A wrongfully restrains Z.

340. Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits is said "wrongfully to confine" that person.

* As to the application of ss. 347 and 348 to offences under special or local laws, see s. 40, *supra*.

Illustrations.

(a.) *A* causes *Z* to go within a walled space, and locks *Z* in. *Z* is thus prevented from proceeding in any direction beyond the circumscribing line of wall : *A* wrongfully confines *Z*.

(b.) *A* places men with fire-arms at the outlets of a building, and tells *Z* that they will fire at *Z* if *Z* attempts to leave the building : *A* wrongfully confines *Z*.

Any Mag.
Cognizable.
Summons.
Bailable.
Comp.

341. Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Presy. Mag.,
or Mag. of
1st or 2nd
class.
Cognizable.
Summons.
Bailable.
Comp.

342. Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Presy. Mag.,
or Mag. of
1st or 2nd
class.
Cognizable.
Summons.
Bailable.
Not comp.

343. Whoever wrongfully confines any person for three days or more shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ct. of Ses.,
Presy. Mag.
or Mag. of
1st or 2nd
class.
Cognizable.
Summons.
Bailable.
Not comp.

344. Whoever wrongfully confines any person for ten days or more shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Ct. of Ses.,
Presy. Mag.
or Mag. of
1st or 2nd
class.
Uncog.
Summons.
Bailable.
Not comp.

345. Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any term of imprisonment to which he may be liable under any other section of this chapter.

346. Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to, or discovered by, any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any other punishment to which he may be liable for such wrongful confinement.

Ct. of Ses.,
Presv. Mag.
or Mag. of
1st or 2nd
class.
Cognizable,
Summons,
Bailable.
Not comp.

347*. Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property or valuable security, or of constraining the person confined, or any person interested in such person, to do anything illegal, or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Ditto.

348.* Whoever wrongfully confines any person for the purpose of extorting from the person confined, or any person interested in the person confined, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the person confined, or any person interested in the person confined, to restore, or cause the restoration of, any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with im-

Ct. of Ses.,
Presv. Mag.
or Mag. of
1st class.
Cognizable,
Summons,
Bailable.
Not comp.

* In ss. 347 and 348, the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

prisonment of either description for a term which may extend to three years, and shall also be liable to fine.

*Of Criminal Force and Assault.**

349. A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling :

Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion, in one of the three ways hereinafter described :—

First—By his own bodily power :

Secondly—By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person :

Thirdly—By inducing any animal to move, to change its motion, or to cease to move.

350. Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or

* Offences punishable under ss. 352, 355, and 358 are compoundable.—See the Code of Criminal Procedure (Act V. of 1898), s. 345. As to stage of proceedings at which no composition is allowable without the leave of the Court, see *ibid*, sub-s. (5).

As to punishment for an offence under s. 354, enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

intending, by the use of such force, to cause, or knowing it to be likely that, by the use of such force, he will cause, injury, fear, or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Illustrations.

(a.) *Z* is sitting in a moored boat on a river. *A* unfastens the mooring, and thus intentionally causes the boat to drift down the stream: Here *A* intentionally causes motion to *Z*, and he does this by disposing substances in such a manner that the motion is produced without any other act on any person's part. *A* has therefore intentionally used force to *Z*; and, if he has done so without *Z*'s consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear, or annoyance to *Z*, *A* has used criminal force to *Z*.

(b.) *Z* is riding in a chariot. *A* lashes *Z*'s horses, and thereby causes them to quicken their pace. Here *A* has caused change of motion to *Z* by inducing the animals to change their motion: *A* has therefore used force to *Z*; and, if *A* has done this without *Z*'s consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy *Z*, *A* has used criminal force to *Z*.

(c.) *Z* is riding in a palanquin. *A*, intending to rob *Z*, seizes the pole, and stops the palanquin: Here *A* has caused cessation of motion to *Z*, and he has done this by his own bodily power. *A* has therefore used force to *Z*, and, as *A* has acted thus intentionally, without *Z*'s consent, in order to the commission of an offence, *A* has used criminal force to *Z*.

(d.) *A* intentionally pushes against *Z* in the street: Here *A* has, by his own bodily power, moved his own person so as to bring it into contact with *Z*: He has therefore intentionally used force to *Z*; and, if he has done so without *Z*'s consent intending or knowing it to be likely that he may thereby injure, frighten, or annoy *Z*, he has used criminal force to *Z*.

(e.) *A* throws a stone intending or knowing it to be likely that the stone will be thus brought into contact with *Z*, or with *Z*'s clothes, or with something carried by *Z*, or that it will strike water, and dash up the water against *Z*'s clothes or something carried by *Z*: Here, if the throwing of the stone produce the effect of causing any substance to come into contact with *Z* or *Z*'s clothes, *A* has used force to *Z*; and, if he did so without *Z*'s consent, intending thereby to injure, frighten, or annoy *Z*, he has used criminal force to *Z*.

(f.) *A* intentionally pulls up a woman's veil. Here *A* intentionally uses force to her; and if he does so without her consent intending or knowing it to be likely that he may thereby injure, frighten, or annoy her, he has used criminal force to her.

(g.) *Z* is bathing. *A* pours into the bath water which he knows to be boiling: Here *A* intentionally, by his own bodily power, causes such motion in the boiling water as brings that water into contact with *Z*, or with other water so situated that such contact must affect *Z*'s sense of feeling: *A* has therefore intentionally used force to *Z*; and if he has done this without *Z*'s consent, intending or knowing it to be likely that he may thereby cause injury, fear, or a annoyance to *Z*, *A* has used criminal force.

(h.) *A* incites a dog to spring upon *Z* without *Z*'s consent. Here, if *A* intends to cause injury, fear, or annoyance to *Z*, he uses criminal force to *Z*.

351. Whoever makes any gesture or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparations such a meaning as may make those gestures or preparations amount to an assault.

Illustrations.

(a.) *A* shakes his fist at *Z*, intending or knowing it to be likely that he may thereby cause *Z* to believe that *A* is about to strike *Z*: *A* has committed an assault.

(b.) *A* begins to unloose the muzzle of a ferocious dog intending or knowing it to be likely that he may thereby cause *Z* to believe that he is about to cause the dog to attack *Z*. *A* has committed an assault upon *Z*.

(c.) *A* takes up a stick, saying to *Z*, "I will give you a beating:" Here though the words used by *A* could in no case amount to an assault, and though the mere gesture unaccompanied by any other circumstances might not amount to an assault, the gesture explained by the words may amount to an assault

352. Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Punishment for assault or criminal force otherwise than on grave provocation.

Any Mag. Uncog. Summons. Bailable. Comp.

Explanation.—Grave and sudden provocation will not mitigate the punishment for an offence under this section if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence; or

if the provocation is given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant; or

if the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence is a question of fact.

353. Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done, or attempted to be done, by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force to deter a public servant from discharge of his duty.

Presy. Mag., or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.

354. Whoever assaults, or uses criminal force to any woman, intending to outrage, or knowing it to be likely that he will thereby outrage, her modesty, shall be punished with imprisonment of

Assault or criminal force to woman with intent to outrage her modesty.

Ditto.

either description for a term which may extend to two years, or with fine, or with both.

Presy. Mag.
or Mag. of
1st or 2nd
class.
Uncog.
Summons.
Bailable.
Comp.

355. Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Any Mag.
Cognizable.
Warrant.
Not bailable.
Not comp.

356. Whoever assaults or uses criminal force to any person in attempting to commit theft on any property which that person is then wearing or carrying shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Any Mag.
Cognizable.
Warrant.
Bailable.
Not comp.

357. Whoever assaults or uses criminal force to any person in attempting wrongfully to confine that person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Any Mag.
Uncog.
Summons.
Bailable.
Comp.

358. Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Explanation.—The last section is subject to the same Explanation as section 352.

*Of Kidnapping, Abduction, Slavery, and Forced Labour.**

359. Kidnapping is of two kinds—kidnapping from British India, and kidnapping from lawful guardianship.

360. Whoever conveys any person beyond the limits of British India without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from British India.

361. Whoever takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation.—The words “lawful guardian” in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception.—This section does not extend to the act of any person who, in good faith, believes himself to be the father of an illegitimate child, or who, in good faith, believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

Comment.—Kidnapping is an offence without any intent.

* As to punishment for offences under ss. 363 to 369, enquired into by a Council of Elders in a Punjab Frontier District, or in Baluchistan, see the Punjab Frontier Crimes Regulation (iv. of 1887), s. 14.

Offences punishable under s. 374 are compoundable.—See the Code of Criminal Procedure (Act V. of 1898), s. 345. As to stage of proceedings at which no composition is allowable without the leave of the Court, see *ibid.*, sub s. (5).

362. Whoever, by force, compels, or, by any deceitful means, induces, any person to go from any place, is said to abduct that person.

Abduction.

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st class.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

363. Whoever kidnaps any person from British India or from lawful guardianship shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

364. Whoever kidnaps or abducts any person in order that such person may be murdered, or may be so disposed of as to be put in danger of being murdered, shall be punished with transportation for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

Kidnapping or abducting in order to murder.

Illustrations.

(a.) *A* kidnaps *Z* from British India, intending or knowing it to be likely that *Z* may be sacrificed to an idol: *A* has committed the offence defined in this section.

(b.) *A* forcibly carries or entices *B* away from his home in order that *B* may be murdered: *A* has committed the offence defined in this section.

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st class.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

365. Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

366. Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she

may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Kidnapping or abducting woman to compel her marriage, &c.

367. Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to grievous hurt or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

368. Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose, as that with or for which he conceals or detains such person in confinement.

Ditto.

369. Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any moveable property from the person of such child shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.,
Presv. Mag.
or Mag. of
1st class.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

370. Whoever imports, exports, removes, buys, sells, or disposes of any person as a slave, or accepts, receives, or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.,
Uncog.
Warrant.
Bailable.
Not comp.

371. Whoever habitually imports, exports, removes, buys, sells, traffics, or deals in slaves, shall be punished with transportation for life, or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Ct. of Ses.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st class.
Cognizable.
Warrant.
Not Bail-
able.
Not comp.

372. Whoever sells, lets to hire, or otherwise disposes of any minor under the age of sixteen years with intent that such minor shall be employed or used for the purpose of prostitution, or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ditto.

373. Whoever buys, hires, or otherwise obtains possession of any minor under the age of sixteen years with intent that such minor shall be employed or used for the purpose of prostitution, or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Any Mag.
Cognizable.
Warrant.
Bailable.
Comp.

374. Whoever unlawfully compels any person to labour against the will of that person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

*Of Rape.**

375. A man is said to commit "rape," who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:—

* As to whipping, see now the Whipping Act (IV. of 1909) : and, in the Punjab Frontier Districts and Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 8.

As to punishment where an offence is enquired into by a Council of Elders in a Punjab Frontier District, or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

First—Against her will :

Secondly—Without her consent :

Thirdly—With her consent, when her consent has been obtained by putting her in fear of death or of hurt :

Fourthly—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is, or believes herself to be, lawfully married :

Fifthly—With or without her consent when she is under twelve* years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under twelve* years of age, is not rape.

376. Whoever commits rape shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

If the sexual intercourse was by a man with his own wife, the following is the procedure :

Police not to arrest without warrant. Summons to issue in the first instance. Bail to be taken. Not compoundable. Triable by Court of Session. In any other case the following is the procedure. Police may arrest without warrant. Warrant to issue in the first instance. Not bailable. Not compoundable. Triable by Court of Session.

Of Unnatural Offences.†

377. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Not bailable. Not comp.

* In s 375. the word "twelve" has been substituted for the word "ten" by the Indian Criminal Law Amendment Act (X. of 1891) s. 1.

† As to whipping, see the Whipping Act (IV. of 1909), and, in the Punjab Frontier Districts and Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 8.

Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

CHAPTER XVII.*

OF OFFENCES AGAINST PROPERTY.

Of Theft.†

378. Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Explanation 1.—A thing, so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.—A moving effected by the same act which effects the severance may be a theft.

* As to enhanced punishment for second conviction for certain offences under Ch. XVII., see s. 75, *supra*.

As to punishment where an offence is enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

† All persons are bound to give information of offences punishable under s. 382.—See the Code of Criminal Procedure (Act V. of 1898) s. 44.

As to whipping for offences under ss. 378, 380, 381, 382, see the Whipping Act (IV. of 1909) and (in the Assam Hill Districts) R. o. g. III. of 1875, ss. 2, 3.

As to whipping for offences under s. 382 in the Punjab Frontier Districts and Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 8.

As to punishment for offences under ss. 379-382, inquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

As to extortion by threat of accusation of an offence under s. 377, see ss. 388, 389, *infra*.

Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving, or by separating it from any other thing, as well as by actually moving it.

Explanation 4.—A person, who, by any means, causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority, either express or implied.

Comment.—It is theft under the Code to take goods in order to keep the person entitled to the possession of them out of the possession of them for a time, although the taker did not intend to himself appropriate them or to entirely deprive the owner of them—*Queen-Empress v. Sri Churn Chungo*, I. L. R., 22 Cal. 1021.

Illustrations.

(a.) *A* cuts down a tree on *Z*'s ground, with the intention of dishonestly taking the tree out of *Z*'s possession, without *Z*'s consent: Here, as soon as *A* has severed the tree in order to such taking, he has committed theft.

(b.) *A* puts a bait for dogs in his pocket, and thus induces *Z*'s dog to follow it: Here, if *A*'s intention be dishonestly to take the dog out of *Z*'s possession without *Z*'s consent, *A* has committed theft as soon as *Z*'s dog has begun to follow *A*.

(c.) *A* meets a bullock carrying a box of treasure. He drives the bullock in a certain direction in order that he may dishonestly take the treasure: As soon as the bullock begins to move, *A* has committed theft of the treasure.

(d.) *A*, being *Z*'s servant, and entrusted by *Z* with the care of *Z*'s plate, dishonestly runs away with the plate without *Z*'s consent: *A* has committed theft.

(e.) *Z*, going on a journey, entrusts his plate to *A*, the keeper of a warehouse, till *Z* shall return. *A* carries the plate to a goldsmith, and sells it: Here the plate was not in *Z*'s possession. It could not therefore be taken out of *Z*'s possession, and *A* has not committed theft, though he may have committed criminal breach of trust.

(f.) *A* finds a ring belonging to *Z* on a table in the house which *Z* occupies : Here the ring is in *Z*'s possession, and, if *A* dishonestly removes it, *A* commits theft.

(g.) *A* finds a ring lying on the high road, not in the possession of any person : *A*, by taking it, commits no theft, though he may commit criminal misappropriation of property.

(h.) *A* sees a ring belonging to *Z* lying on a table in *Z*'s house. Not venturing to misappropriate the ring immediately for fear of search and detection, *A* hides the ring in a place where it is highly improbable that it will ever be found by *Z*, with the intention of taking the ring from the hiding place, and selling it when the loss is forgotten : Here *A*, at the time of first moving the ring, commits theft.

(i.) *A* delivers his watch to *Z*, a jeweller, to be regulated. *Z* carries it to his shop. *A*, not owing the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of *Z*'s hand, and carries it away : Here *A*, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

(j.) If *A* owes money to *Z* for repairing the watch, and if *Z* retains the watch lawfully as a security for the debt, and *A* takes the watch out of *Z*'s possession with the intention of depriving *Z* of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(k.) Again, if *A*, having pawned his watch to *Z*, takes it out of *Z*'s possession without *Z*'s consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property, inasmuch as he takes it dishonestly.

(l.) *A* takes an article belonging to *Z* out of *Z*'s possession, without *Z*'s consent with the intention of keeping it until he obtains money from *Z* as a reward for its restoration : Here *A* takes dishonestly. *A* has therefore committed theft.

(m.) *A*, being on friendly terms with *Z*, goes into *Z*'s library in *Z*'s absence, and takes away a book without *Z*'s express consent, for the purpose merely of reading it, and with the intention of returning it : Here it is probable that *A* may have conceived that he had *Z*'s implied consent to use *Z*'s book. If this was *A*'s impression, *A* has not committed theft.

(n.) *A* asks charity from *Z*'s wife. She gives *A* money, food, and clothes, which *A* knows to belong to *Z*, her husband : Here it is probable that *A* may conceive that *Z*'s wife is authorized to give away alms. If this was *A*'s impression, *A* has not committed theft.

(o.) *A* is the paramour of *Z*'s wife. She gives *A* valuable property which *A* knows to belong to her husband *Z*, and to be such property as she has not authority from *Z* to give: If *A* takes the property dishonestly, he commits theft.

(p.) *A*, in good faith, believing property belonging to *Z* to be *A*'s own property, takes that property out of *B*'s possession: Here, as *A* does not take dishonestly, he does not commit theft.

379. Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Any Mag.
Cognizable.
Warrant.
Not bail-
able.
Not comd.

380. Whoever commits theft in any building, tent, house, &c. or vessel, which building, tent, or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ditto

381. Whoever, being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st or 2nd
class.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

382. Whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st class.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

Illustrations.

(a.) *A* commits theft on property in *Z*'s possession; and, while committing this theft, he has a loaded pistol under his garment,

having provided this pistol for the purpose of hurting *Z* in case *Z* should resist : *A* has committed the offence defined in this section.

(b.) *A* picks *Z*'s pocket, having posted several of his companions near him in order that they may restrain *Z* if *Z* should perceive what is passing, and should resist, or should attempt to apprehend, *A* : *A* has committed the offence defined in this section.

*Of Extortion.**

383. Whoever intentionally puts any person in fear of any injury to that person or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed, which may be converted into a valuable security, commits "extortion."

Illustrations.

(a.) *A* threatens to publish a defamatory libel concerning *Z* unless *Z* gives him money. He thus induces *Z* to give him money : *A* has committed extortion.

(b.) *A* threatens *Z* that he will keep *Z*'s child in wrongful confinement unless *Z* will sign and deliver to *A* a promissory note binding *Z* to pay certain moneys to *A*. *Z* signs and delivers the note : *A* has committed extortion.

(c.) *A* threatens to send club-men to plough up *Z*'s field unless *Z* will sign and deliver to *B* a bond binding *Z* under a penalty to deliver certain produce to *B*, and thereby induces *Z* to sign and deliver the bond : *A* has committed extortion.

(d.) *A*, by putting *Z* in fear of grievous hurt, dishonestly induces *Z* to sign or affix his seal to a blank paper, and deliver it to *A*. *Z* signs and delivers the paper to *A* : Here, as the paper so signed may be converted into a valuable security, *A* has committed extortion.

* As to the application of ss. 388 and 389 to offences under special or local laws, see s. 40, *supra*.

As to whipping for offences defined in ss. 388 and 389, see the Whipping Act (IV. of 1909) and (in the Assam Hill District) Reg. III. of 1875, ss. 2, 3.

384. Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

385. Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

386. Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

387. Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death, or of grievous hurt to that person, or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

388.* Whoever commits extortion by putting any person in fear of an accusation against that person or any other of having committed, or attempted to commit, any offence punishable with death, or with transportation for life, or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term which

Ct. of Ses.
Presy. Mag.
or Mag. of
1st or 2nd
class.
Uncog.
Warrant.
Bailable.
Not comp.

Ditto.

Ct. of Ses.
Uncog.
Warrant.
Not bail-
able.
Not comp.

Ditto.

Ct. of S
Uncog.
Warrant.
Bailable.
Not comp.

* In s. 388, the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

may extend to ten years, and shall also be liable to fine; and, if the offence be one punishable under section 377 of this Code, may be punished with transportation for life.

Ct. of Ses.
Uncog.
Warrant.
Bailable.
Not comp.

389.* Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation against that person or any other of having committed, or attempted to commit, an offence punishable with death, or with transportation for life, or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be punishable under section 377 of this Code, may be punished with transportation for life.

Of Robbery and Dacoity.†

390. In all robbery, there is either theft or extortion.

Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away, or attempting to carry away, property obtained by the theft, When theft is robbery.

* In s. 389, the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—*See* s. 40 of this Code, *supra*.

† All persons are bound to give information of offences punishable under ss. 392 to 399 or 402.—*See* the Code of Criminal Procedure (Act V. of 1893), s. 44. *See* also the same section of Act X. of 1882 as amended for Burma by the Upper Burma Village Regulation (XIV. of 1887), s. 4, and by the Lower Burma Village Act (III. of 1889), s. 5, as to dacoity and robbery.

As to whipping for offences under ss. 390, 391, 393, 394, *see* the Whipping Act (IV. of 1909); for offences under

the offender, for that end, voluntarily causes, or attempts to cause, to any person, death or hurt, or wrongful restraint, or fear of instant death, or of instant hurt, or of instant wrongful restraint.

Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person, or to some other person; and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation.—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

Object.—In one single class of cases, theft and extortion are in practice confounded together so inextricably, that no Judge, however sagacious, could discriminate between them. This class of cases, therefore, has in all system of jurisprudence been treated as a perfectly distinct class. Therefore robbery has been made a separate crime.

Illustrations.

(a.) *A* holds *Z* down, and fraudulently takes *Z*'s money and jewels from *Z*'s clothes without *Z*'s consent: Here *A* has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to *Z*: *A* has therefore committed robbery.

(b.) *A* meets *Z* on the high road, shows a pistol, and demands *Z*'s purse. *Z*, in consequence, surrenders his purse: Here *A* has extorted the purse from *Z* by putting him in

ss. 392-399 in the Punjab Frontier Districts and in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 8.

As to punishment for offences under ss. 392-399 enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation IV. of 1887, s. 14.

fear of instant hurt, and being, at the time of committing the extortion, in his presence. *A* has, therefore, committed robbery.

(c.) *A* meets *Z* and *Z*'s child on the high road. *A* takes the child, and threatens to fling it down a precipice unless *Z* delivers his purse. *Z*, in consequence, delivers his purse: Here *A* has extorted the purse from *Z* by causing *Z* to be in fear of instant hurt to the child who is there present: *A* has therefore committed robbery on *Z*.

(d.) *A* obtains property from *Z* by saying "Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees." This is extortion, and punishable as such; but it is not robbery unless *Z* is put in fear of the instant death of his child.

391. When five or more persons conjointly commit, or attempt to commit a robbery, or, where the whole number of persons conjointly committing, or attempting to commit, a robbery, and persons present and aiding such commission or attempt amount to five or more, every person so committing, attempting, or aiding is said to commit "dacoity."

Ct. of Ses.
Presy. Mag.,
or Mag. of
1st class
Cognizable
Warrant.
Not bail-
able.
Not comp.

392. Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

Ditto.

393. Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Ditto.

394. If any person, in committing, or in attempting to commit, robbery, voluntarily causing hurt in committing robbery, or causes hurt, such person and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

395. Whoever commits dacoity shall be punished Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp. with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

396. If any one of five or more persons, who are Ditto. conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death or transportation for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

397. If, at the time of committing robbery or dacoity, Ditto. the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

398. If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years. Ditto.

399. Whoever makes any preparation for committing dacoity shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. Ditto.

400. Whoever, at any time after the passing of this Ditto. Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st class.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

401. Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

402. Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Of Criminal Misappropriation of Property.

Any Mag.
Uncog.
Warrant.
Bailable.
Not comp.

403.* Whoever dishonestly misappropriates or converts to his own use any moveable property shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations.

(a.) A takes property belonging to Z out of Z's possession, in good faith believing, at the time when he takes it, that the property belongs to himself: A is not guilty of theft; but, if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

(b.) A, being, on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent: Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But, if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

* As to framing a charge under s. 403, see s. 222 of new Code of Criminal Procedure (Act V. of 1898).

(c) *A* and *B* being joint-owners of a horse, *A* takes the horse out of *B*'s possession, intending to use it: Here, as *A* has a right to use the horse, he does not dishonestly misappropriate it. But, if *A* sells the horse, and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

Explanation 1.—A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

Illustration.

A finds a Government promissory note belonging to *Z*, bearing a blank endorsement. *A*, knowing that the note belongs to *Z*, pledges it with a banker as a security for a loan, intending at a future time to restore it to *Z*: *A* has committed an offence under this section.

Explanation 2.—A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined if he appropriates it to his own use when he knows, or has the means of discovering, the owner, or before he has used reasonable means to discover and give notice to the owner, and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means, or what is a reasonable time, in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it: it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believe that the real owner cannot be found.

Illustrations.

(a) *A* finds a rupee on the high road, not knowing to whom the rupee belongs. *A* picks up the rupee. Here *A* has not committed the offence defined in this section.

(b.) *A* finds a letter on the road, containing a bank-note. From the direction and contents of the letter, he learns to whom the note belongs. He appropriates the note: He is guilty of an offence under this section.

(c.) *A* finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person who has drawn the cheque appears. *A* knows that this person can direct him to the person in whose favour the cheque was drawn. *A* appropriates the cheque without attempting to discover the owner : He is guilty of an offence under this section.

(d.) *A* sees *Z* drop his purse with money in it. *A* picks up the purse with the intention of restoring it to *Z*, but afterwards appropriates it to his own use : *A* has committed an offence under this section.

(e.) *A* finds a purse with money, not knowing to whom it belongs ; he afterwards discovers that it belongs to *Z*, and appropriates it to his own use : *A* is guilty of an offence under this section.

(f.) *A* finds a valuable ring, not knowing to whom it belongs. *A* sells it immediately without attempting to discover the owner : *A* is guilty of an offence under this section.

Ct. of Ses.
Presy. Mag.,
or Mag. of
1st or 2nd
class.
Uncog.
Warrant.
Bailable.
Not comp.

404. Whoever dishonestly misappropriates or converts to his own use property knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ; and, if the offender, at the time of such person's decease, was employed by him as a clerk or servant, the imprisonment may extend to seven years.

Dishonest misappropriation of property possessed by deceased person at the time of his death.

that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any

person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ; and, if the offender, at the time of such person's decease, was employed by him as a clerk or servant, the imprisonment may extend to seven years.

Illustration.

Z dies in possession of furniture and money. His servant *A*, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it : *A* has committed the offence defined in this section.

Of Criminal Breach of Trust.

405.* Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust."

Dishonestly.—Dishonest intention is the gist of the offence.

Illustrations.

(a.) *A*, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use: *A* has committed criminal breach of trust.

(b.) *A* is a warehouse-keeper. *Z*, going on a journey, entrusts his furniture to *A* under a contract that it shall be returned on payment of a stipulated sum for warehouse room. *A* dishonestly sells the goods: *A* has committed criminal breach of trust.

(c.) *A*, residing in Calcutta, is agent for *Z*, residing at Delhi. There is an express or implied contract between *A* and *Z* that all sums remitted by *Z* to *A* shall be invested by *A* according to *Z*'s direction. *Z* remits a lakh of rupees to *A* with directions to *A* to invest the same in Company's Paper. *A* dishonestly disobeys the directions, and employs the money in his own business: *A* has committed criminal breach of trust.

(d.) But, if *A*, in the last illustration, not dishonestly, but in good faith, believing that it will be more for *Z*'s advantage to hold shares in the Bank of Bengal, disobeys *Z*'s directions, and buys shares in the Bank of Bengal for *Z* instead of buying Company's Paper, here, though *Z* should suffer loss, and should be entitled to bring a civil action against *A* on account of that loss, yet *A*, not having acted dishonestly, has not committed criminal breach of trust.

* As to framing a charge under s. 405, see s. 222 of the Code of Criminal Procedure (Act V. of 1898).

(e.) *A*, a revenue-officer, is entrusted with public money, and is either directed by law or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. *A* dishonestly appropriates the money: *A* has committed criminal breach or trust.

(f.) *A*, a carrier, is entrusted by *Z* with property to be carried by land or by water. *A* dishonestly misappropriates the property: *A* has committed criminal breach of trust.

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st or 2nd
class.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

406. Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st class.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

407. Whoever, being entrusted with property as a carrier, wharfinger or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st or 2nd
class.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

408. Whoever, being a clerk or servant, or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st class.
Uncog.
Warrant.
Not bail-
able.
Not comp.

409. Whoever, being in any manner entrusted with property, or with any dominion over property, in his capacity of a public servant, or in the way of his business as a banker, merchant, factor, broker, attorney, or agent, commits criminal breach of trust in respect of that property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*Of the Receiving of Stolen Property.**

410. Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated, or in respect of which a criminal breach of trust has been committed, is designated as *stolen property* "whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without British India."† But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

411. Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st or 2nd
class.
Cognizable,
Warrant.
Not bail-
able.
Not comp.

412. Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person whom he knows or has reason to believe to belong, or to have belonged, to a gang of dacoits, property which he knows or has reason to believe

Ct. of Ses.
Cognizable,
Warrant.
Not bail-
able.
Not comp.

* As to whipping for the offences defined in ss. 411-413, see now the Whipping Act (IV. of 1909).

As to punishment for offences under ss. 411-414, enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

† In s. 410, the words, "the offence of," have here been omitted—the word "the" being repealed by the Repealing and Amending Act (XII. of 1891), and the words, "offence of," by the Indian Penal Code Amendment Act (VIII. of 1882), s. 9.

‡ In s. 410, the words quoted have been inserted by the Indian Penal Code Amendment Act (VIII. of 1882), s. 9.

to have been stolen, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Scope.—Receipt or retention, with full knowledge at the time of receipt, that the property was stolen, must be proved.

Ct. of Ses.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

413. Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st or 2nd
class.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

414. Whoever voluntarily assists in concealing or disposing of, or making away with, property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Of Cheating.

415. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes, or is likely to cause, damage or harm to that person in body, mind, reputation, or property, is said to "cheat."

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations.

(a.) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to

let him have on credit goods for which he does not mean to pay: *A* cheats.

(*b.*) *A*, by putting a counterfeit mark on an article, intentionally deceives *Z* into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces *Z* to buy and pay for the article: *A* cheats.

(*c.*) *A*, by exhibiting to *Z* a false sample of an article, intentionally deceives *Z* into believing that the article corresponds with the sample, and thereby dishonestly induces *Z* to buy and pay for the article: *A* cheats.

(*d.*) *A*, by tendering in payment for an article a bill on a house with which *A* keeps no money, and by which *A* expects that the bill will be dishonoured, intentionally deceives *Z* and thereby dishonestly induces *Z* to deliver the article, intending not to pay for it: *A* cheats.

(*e.*) *A*, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives *Z*, and thereby dishonestly induces *Z* to lend money: *A* cheats.

(*f.*) *A* intentionally deceives *Z* into a belief that *A* means to repay any money that *Z* may lend to him, and thereby dishonestly induces *Z* to lend him money, *A* not intending to repay it: *A* cheats.

(*g.*) *A* intentionally deceives *Z* into a belief that *A* means to deliver, to *Z* a certain quantity of indigo-plant which he does not intend to deliver and, thereby dishonestly induces *Z* to advance money upon the faith of such delivery: *A* cheats; but, if *A*, at the time of obtaining the money, intends to deliver the indigo-plant, and afterwards breaks his contract, and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(*h.*) *A* intentionally deceives *Z* into a belief that *A* has performed *A*'s part of a contract made with *Z*, which he has not performed, and thereby dishonestly induces *Z* to pay money: *A* cheats.

(*i.*) *A* sells and conveys an estate to *B*. *A*, knowing that, in consequence of such sale, he has no right to the property, sells or mortgages the same to *Z*, without disclosing the fact of the previous sale and conveyance to *B*, and receives the purchase or mortgage-money from *Z*: *A* cheats.

416. A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly
 * Cheating by personation.

substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Explanation.—The offence is committed whether the individual personated is a real or imaginary person.

Illustrations.

(a.) A cheats by pretending to be a certain rich banker of the same name: A cheats by personation.

(b.) A cheats by pretending to be B, a person who is deceased: A cheats by personation.

Presy. Mag., or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable. Not comp.	417. Whoever Punishment for cheat- ing. year, or with fine, or	cheats shall be punished with im- prisonment of either description for a term which may extend to one with both.
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Ct. of Ses., Presy. Mag., or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable. Not comp.	418. Whoever Cheating with know- ledge that wrongful loss may ensue to per- son whose interest of- fender is bound to protect. of either description for a term which may extend to three years or with fine, or with both.	cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates he was bound, either by law or by a legal contract, to protect, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.
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Ct. of Ses., Presy. Mag., or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.	419. Whoever Punishment for cheating by personation. with imprisonment of either descrip- tion for a term which may extend to three years, or with fine, or with both.	cheats by personation shall be punished with imprisonment of either descrip- tion for a term which may extend to three years, or with fine, or with both.
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Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Bailable. Not comp.	420. Whoever Cheating and dish- onestly inducing deli- very of property. any property to any person, or to make, alter, or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.	cheats and thereby dishonestly in- duces the person deceived to deliver any property to any person, or to make, alter, or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
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Of Fraudulent Deeds and Dispositions of Property.

421. Whoever dishonestly or fraudulently removes, conceals, or delivers to any person, or transfers, or causes to be transferred, to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.

Presy. Mag., or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable. Not comp.

422. Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonestly or fraudulently preventing debt being available for creditors.

Ditto.

423. Whoever dishonestly or fraudulently signs, executes, or becomes a party to, any deed or instrument which purports to transfer or subject to any charge any property or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonest or fraudulent execution of deed of transfer containing false statement of consideration.

Ditto.

424. Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall

Dishonest or fraudulent removal or concealment of property.

Ditto.

be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

*Of Mischief.**

425. Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public, or to any person, causes the destruction of any property, or any such change in any property, or in the situation thereof, as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief."

Explanation 1—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

* All persons are bound to give information of offences punishable under s. 435 or 436.—*See* the Code of Criminal Procedure (Act V. of 1898), s. 44.

Offences punishable under ss. 426 and 427 are, in certain cases, compoundable.—*See ibid*, s. 345. As to stage or proceedings at which no composition is allowable without the leave of the Court, *see ibid*, sub-s. (5).

As to whipping in the Punjab Frontier districts and Baluchistan for offences punishable under ss. 427 to 429, 435, and 436, *see* the Punjab Frontier Crimes Regulation (IV. of 1887), s. 8.

As to punishment for offences under ss. 427, 429, 435, and 436, enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, *see* the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

Illustrations.

(a.) *A* voluntarily burns a valuable security belonging to *Z*, intending to cause wrongful loss to *Z*: *A* has committed mischief.

(b.) *A* introduces water into an ice-house belonging to *Z*, and thus causes the ice to melt, intending wrongful loss to *Z*: *A* has committed mischief.

(c.) *A* voluntarily throws into a river a ring belonging to *Z*, with the intention of thereby causing wrongful loss to *Z*: *A* has committed mischief.

(d.) *A*, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to *Z*, destroys those effects with the intention of thereby preventing *Z* from obtaining satisfaction of the debt, and of thus causing damage to *Z*: *A* has committed mischief.

(e.) *A*, having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the under-writers. *A* has committed mischief.

(f.) *A* causes a ship to be cast away intending thereby to cause damage to *Z*, who has lent money on bottomry on the ship: *A* has committed mischief.

(g.) *A*, having joint property with *Z* in a horse, shoots the horse, intending thereby to cause wrongful loss to *Z*. *A* has committed mischief.

(h.) *A* causes cattle to enter upon a field belonging to *Z*, intending to cause, and knowing that he is likely to cause, damage to *Z*'s crop. *A* has committed mischief.

426. Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

427. Whoever commits mischief, and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Note to s. 426:
Any Mag. Uncog. Summons. Bailable. Comp. when the only loss or damage caused is loss or damage to a private person.
Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable. Com. when the only loss or damage caused is loss or damage to a private person.

Notes to—
s. 428.

Presy. Mag.,
or Mag. of
1st or 2nd
class.
Cognizable.
Warrant.
Bailable.
Not comp.

428. Whoever commits mischief by killing, poisoning, maiming, or rendering useless any animal or animals of the value of ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

s. 429

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st or 2nd
class.
Cognizable.
Warrant.
Bailable.
Not comp.

429. Whoever commits mischief by killing, poisoning, maiming, or rendering useless any elephant, camel, horse, mule, buffalo, bull, cow, or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Ditto.

430. Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings, or for animals which are property, or for cleanliness, or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Ditto.

431. Whoever commits mischief by doing any act which renders, or which he knows to be likely to render, any public road, bridge, navigable river, or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

432. Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st or 2nd
class.
Cognizable.
Warrant.
Bailable.
Not comp.

433. Whoever commits mischief by destroying or moving any light-house or other light used as a sea-mark, or any sea-mark or buoy or other thing placed as a guide for navigators, or by any act which renders any such light-house, sea-mark, buoy, or other such thing as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Ct. of Ses.,
Cognizable.
Warrant.
Bailable.
Not comp.

434. Whoever commits mischief by destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Presy. Mag.,
or Mag. of
1st or 2nd
class.
Uncog.
Warrant.
Bailable.
Not comp.

435. Whoever commits mischief by fire or any explosive substance, intending to cause or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards, "or (where the property is agricultural produce) ten rupees or upwards,"* shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st class.
Cognizable.
Warrant.
Bailable.
Not comp.

* In s. 435, the words quoted have been inserted by the Indian Penal Code Amendment Act (VIII. of 1882), s. 10.

Ct. of Ses.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

436. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship, or as a human dwelling, or as a place for the custody of property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Id.

437. Whoever commits mischief to any decked vessel or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Id.

438. Whoever commits, or attempts to commit, by fire or any explosive substance, such mischief as is described in the last preceding section, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Id.

439. Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein, or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

440. Whoever commits mischief, having made preparation for causing to any person death or hurt, or wrongful restraint, or fear of death or of hurt, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Mischief committed after preparation made for causing death or hurt.

Ct. of Ses., Presy, Mag. or Mag. of 1st class. Cognizable. Warrant. Not bailable. Not comp.

*Of Criminal Trespass.**

441.† Whoever enters into or upon property in the possession of another with intent to commit an offence, or to intimidate, insult, or annoy any person in possession of such property, or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate,

Criminal trespass.

* As to the application of ss. 441 and 445 to offences under special or local laws, *see* s. 40, *supra*.

All persons are bound to give information of offences punishable under ss. 449, 450, and 456 to 460.—*See* the Code of Criminal Procedure (Act V. of 1898), s. 44.

Village headmen, &c., to give information of offences under ss. 449, 450, and 457 to 460.—*See* the Code of Criminal Procedure (Act V. of 1898), s. 45.

Offences punishable under ss. 447 and 448 are compoundable.—*See ibid.*, s. 345. As to stage of proceedings at which no composition is allowable without the leave of the Court, *see ibid.*, sub-s. (5).

As to whipping for offences defined in ss. 443-446, *see* the Whipping Act (IV. of 1909).

As to whipping for offences punishable under ss. 448-460 in the Punjab Frontier Districts and Baluchistan, *see* the Punjab Frontier Crimes Regulation (IV. of 1887), s. 8.

As to punishment for offences under ss. 448-460 enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, *see* the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

† In s. 441, the word "offence" has the same meaning when the thing punishable under the special or local law as defined in ss. 41 and 42 is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—*See* s. 40, *supra*.

insult, or annoy any such person, or with intent to commit an offence,

is said to commit "criminal trespass."

Possession.—Possession must be actual possession of some other person other than the alleged trespasser.

442. Whoever commits criminal trespass by entering into, or remaining in, any building, House-trespass. tent, or vessel used as a human dwelling, or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass."

Explanation.—The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

443. Whoever commits house-trespass, having taken Lurking house-trespass. precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent, or vessel which is the subject of the trespass, is said to commit "lurking house-trespass."

444. Whoever commits lurking house-trespass after sunset, and before sunrise, is said to commit "lurking house-trespass by night."

445.* A person is said to commit "house-breaking," who commits house-trespass, if he House-breaking. effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or, having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say :—

* In s. 445, the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

First.—If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

Secondly.—If he enters or quits through any passage not intended by any person other than himself or an abettor of the offence for human entrance, or through any passage to which he has obtained access by scaling or climbing over any wall or building.

Thirdly.—If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass, by any means by which that passage was not intended by the occupier of the house to be opened.

Fourthly.—If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

Fifthly.—If he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault.

Sixthly.—If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself, or by an abettor of the house-trespass.

Explanation.—Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

Illustrations.

(a) A commits house-trespass by making a hole through the wall of Z's house, and putting his hand through the aperture : This is house-breaking.

(b) A commits house-trespass by creeping into a ship at a port-hole between decks : This is house-breaking.

(c.) A commits house-trespass by entering Z's house through a window : This is house-breaking.

(d.) *A* commits house-trespass by entering *Z*'s house through the door, having opened a door which was fastened : This is house-breaking.

(e.) *A* commits house-trespass by entering *Z*'s house through the door, having lifted a latch by putting a wire through a hole in the door : This is house-breaking.

(f.) *A* finds the key of *Z*'s house-door which *Z* had lost, and commits house-trespass by entering *Z*'s house, having opened the door with that key : This is house-breaking.

(g.) *Z* is standing in his door-way, *A* forces a passage by knocking *Z* down, and commits house-trespass by entering the house : This is house-breaking.

(h.) *Z*, the door-keeper of *Y*, is standing in *Y*'s door-way. *A* commits house-trespass by entering the house, having deterred *Z* from opposing him by threatening to beat him : This is house-breaking.

446. Whoever commits house-breaking after sunset, and before sunrise, is said to commit house-breaking by night.

Any Mag.
Cognizable.
Summons.
Bailable.
Comp.

447. Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Any Mag.
Cognizable.
Warrant.
Bailable.
Comp.

448. Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Ct. of Ses.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

449. Whoever commits house-trespass in order to the committing of any offence punishable with death shall be punished with transportation for life, or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.

450. Whoever commits house-trespass in order to the committing of any offence punishable with transportation for life shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Ct. of Ses.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

451. Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and, if the offence* intended to be committed is theft, the term of the imprisonment may be extended to seven years.

Any Mag.
Cognizable.
Warrant.
Bailable.
Not comp.

*Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st or 2nd
class.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

Ditto.

452. Whoever commits house-trespass, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

453. Whoever commits lurking house-trespass or house-breaking shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Presy. Mag.,
or Mag. of
1st or 2nd
class.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

454. Whoever commits lurking house-trespass or house-breaking in order to the committing of any offence punishable with imprisonment shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st or 2nd
class.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st class.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

455. Whoever

Lurking house-trespass or house-breaking after preparation for hurt, assault, or wrongful restraint.

commits lurking house-trespass or house-breaking, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st or 2nd
class.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

456. Whoever

Punishment for lurking house-trespass or house-breaking by night.

also be liable to fine.

commits lurking house-trespass by night or house-breaking by night shall be punished with imprisonment of either description for a term which may extend to three years, and shall

Ditto.

457. Whoever

Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment.

commits lurking house-trespass by night or house-breaking by night in order to the committing of any offence punishable with imprisonment shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st class.
Cognizable.
Warrant.
Not bail-
able.
Not comp.

458. Whoever

Lurking house-trespass or house-breaking by night after preparation for hurt, assault, or wrongful restraint.

commits lurking house-trespass by night or house-breaking by night, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

commits lurking house-trespass by night or house-breaking by night, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting

459. Whoever, whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Grievous hurt caused whilst committing lurking house-trespass or house-breaking.

Ct. of Ses., Cognizable. Warrant. Not bailable. Not comp.

460. If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them.

Ditto.

461. Whoever dishonestly, or with intent to commit mischief, breaks open or unfastens any closed receptacle which contains, or which he believes to contain, property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonestly breaking open receptacle containing property.

Presy. Mag., or Mag. of 1st or 2nd class. Cognizable Warrant. Bailable. Not comp.

462. Whoever, being entrusted with any closed receptacle which contains, or which he believes to contain, property, without having authority to open the same, dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for same offence when committed by person entrusted with custody.

Ct. of Ses., Presy. Mag., or Mag. of 1st or 2nd class. Cognizable Warrant. Bailable. Not comp.

CHAPTER XVIII.

OF OFFENCES RELATING TO DOCUMENTS,* AND TO TRADE OR PROPERTY-MARKS.

463. Whoever makes any false document or part of a document with intent to cause damage or injury to the public, or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud, or that fraud may be committed, commits forgery.

Making a false document. **464.** A person is said to make a false document—

first—who dishonestly or fraudulently makes, signs, seals, or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed, or executed by, or by the authority of, a person by whom or by whose authority he knows that it was not made, signed, sealed, or executed, or at a time at which he knows that it was not made, signed, sealed, or executed; or,

secondly—who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof after it has been made or executed, either by himself, or by any other person, whether such person be living or dead at the time of such alteration; or,

thirdly—who dishonestly or fraudulently causes any person to sign, seal, execute, or alter a document, knowing

* As to authority for institution of prosecutions under s. 463, 471, 475, or 476, see the Code of Criminal Procedure (Act V. of 1898), s. 195, sub s. (1), cl. (c).

As to procedure in case of offences described in s. 463, 471, 474, 475, 476, or 477, see now the new Code of Civil Procedure (Act V. of 1908).

As to whipping for the offences defined in ss. 463, 466-469, see now the Whipping Act (IV. of 1909).

that such person, by reason of unsoundness of mind or intoxication, cannot, or that, by reason of deception practised upon him, he does not, know the contents of the document or the nature of the alteration.

Scope.—Deprivation of property, actual or intended, is not an essential element in the offence of fraudulently using as genuine a document which the accused knew or had reason to believe to be false.—(*Queen-Empress v. Haradhan*, 1. L. R. 19 Cal. 380 overruled)—*Empress v. Abbas Ali*, 25 Cal. 512.

Illustrations.

(a.) *A* has a letter of credit upon *B* for Rs. 10,000 written by *Z. A*, in order to defraud *B*, adds a cipher to the 10,000, and makes the sum 1,00,000, intending that it may be believed by *B* that *Z* so wrote the letter : *A* has committed forgery.

(b.) *A*, without *Z*'s authority, affixes *Z*'s seal to a document purporting to be a conveyance of an estate from *Z* to *A*, with the intention of selling the estate to *B*, and thereby obtaining from *B* the purchase-money : *A* has committed forgery.

(c.) *A* picks up a cheque on a banker signed by *B*, payable to bearer, but without any sum having been inserted in the cheque. *A* fraudulently fills up the cheque by inserting the sum of ten thousand rupees : *A* commits forgery.

(d.) *A* leaves with *B*, his agent, a cheque on a banker signed by *A*, without inserting the sum payable, and authorized *B* to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payments. *B* fraudulently fills up the cheque by inserting the sum of twenty thousand rupees : *B* commits forgery.

(e.) *A* draws a bill of exchange on himself in the name of *B* without *B*'s authority, intending to discount it as a genuine bill with a banker, and intending to take up the bill on its maturity : Here, as *A* draws the bill with intent to deceive the banker by leading him to suppose that he had the security of *B*, and thereby to discount the bill, *A* is guilty of forgery.

(f.) *Z*'s will contains these words : " I direct that all my remaining property be equally divided between *A*, *B*, and *C*." *A* dishonestly scratches out *B*'s name intending that it may be believed that the whole was left to himself and *C* : *A* has committed forgery.

(g.) *A* endorses a Government promissory note, and makes it payable to *Z* or his order, by writing on the bill the words, " Pay to *Z* or his order," and signing the endorsement. *B* dis-

honestly erases the words "Pay to Z or his order," and thereby converts the special endorsement into a blank endorsement : *B* commits forgery.

(*k.*) *A* sells and conveys an estate to *Z*. *A*, afterwards, in order to defraud *Z* of his estate, executes a conveyance of the same estate to *B* dated six months earlier than the date of the conveyance to *Z*, intending it to be believed that he had conveyed the estate to *B* before he conveyed it to *Z* : *A* has committed forgery.

(*l.*) *Z* dictates his will to *A*. *A* intentionally writes down a different legatee from the legatee named by *Z*, and, by representing to *Z* that he has prepared the will according to his instructions, induces *Z* to sign the will : *A* has committed forgery.

(*j.*) *A* writes a letter, and signs it with *B*'s name without *B*'s authority certifying that *A* is a man of good character and in distressed circumstances from unforeseen misfortune intending, by means of such letter, to obtain aims from *Z* and other persons : Here, as *A* made a false document in order to induce *Z* to part with property, *A* has committed forgery.

(*k.*) *A*, without *B*'s authority, writes a letter, and signs it in *B*'s name certifying to *A*'s character, intending thereby to obtain employment under *Z* : *A* has committed forgery, inasmuch as he intended to deceive *Z* by the forged certificate, and thereby to induce *Z* to enter into an express or implied contract for service.

Explanation 1.—A man's signature of his own name may amount to forgery.

Illustrations.

(*a.*) *A* signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name : *A* has committed forgery.

(*b.*) *A* writes the word "accepted" on a piece of paper, and signs it with *Z*'s name, in order that *B* may afterwards write on the paper a bill of exchange drawn by *B* upon *Z*, and negotiate the bill as though it had been accepted by *Z* : *A* is guilty of forgery, and if *B*, knowing the fact, draws the bill upon the paper pursuant to *A*'s intention, *B* is also guilty of forgery.

(*c.*) *A* picks up a bill of exchange payable to the order of a different person of the same name. *A* endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable : Here *A* has committed forgery.

(d.) *A* purchases an estate sold under execution of a decree against *B*. *B*, after the seizure of the estate, in collusion with *Z*, executes a lease of the estate to *Z* at a nominal rent, and for a long period, and dates the lease six months prior to the seizure with intent to defraud *A*, and to cause it to be believed that the lease was granted before the seizure: *B*, though he executes the lease in his own name, commits forgery by antedating it.

(e.) *A*, a trader, in anticipation of insolvency, lodges effects with *B* for *A*'s benefit, and with intent to defraud his creditors, and, in order to give a colour to the transaction, writes a promissory note binding himself to pay to *B* a sum for value received and antedates the note, intending that it may be believed to have been made before *A* was on the point of insolvency: *A* has committed forgery under the first head of the definition.

Explanation 2.—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Illustration.

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it: *A* commits forgery.

465. Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ct. of Ses.
Presy. Mag.
or Mag. of
1st class.
Uncog.
Warrant.
Bailable.
Not comp.

466. Whoever forges a document purporting to be a record or proceeding of or in a Court of Justice, or a register of birth, baptism, marriage, or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power-of-attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.
Uncog.
Warrant.
Not bail-
able.
Not comp.

Ct. of Ses.
Uncog.
but cog.
when the
valuable se-
curity is a
pro. note of
the Govt. of
India.
Warrant.
Not bail-
able.
Not comp.

467. Whoever forges a document which purports Forgery of valuable security, will, &c. to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest, or dividends thereon, or to receive or deliver any money, moveable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any moveable property or valuable security, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses.,
Presy. Mag.
or Mag. of
1st class.
Uncog.
Warrant.
Not bail-
able.
Not comp.

468. Whoever commits forgery, intending that the Forgery for purpose document forged shall be used for of cheating. the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st class.
Uncog.
Warrant.
Bailable.
Not comp.

469. Whoever commits forgery, intending that the Forgery for purpose document forged shall harm the of harming reputation. reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

470. A false document made wholly or in part by forgery is designated "a forged document."
Forged document.

Same Court
as that by
which for-
gery is tri-
able.
Uncog.
Warrant.
Bailable.
Not com.
Sanction.

471. Whoever fraudulently or dishonestly uses as Using as genuine a genuine any document which he forged document. knows or has reason to believe to be a forged document shall be punished in the same manner as if he had forged such document.

- 472.** Whoever makes or counterfeits any seal, plate, or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under section 467 of this Code, or, with such intent, has in his possession any such seal, plate, or other instrument, knowing the same to be counterfeit, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.
Uncog.
Warrant.
Not Bail-
able.
Not comp.

Making or possessing counterfeit seal, &c., with intent to commit forgery punishable under section 467.

- 473.** Whoever makes or counterfeits any seal, plate, or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any section of this chapter other than section 467, or, with such intent, has in his possession any such seal, plate, or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.
Uncog.
Warrant.
Bailable.
Not comp.

Making or possessing counterfeit seal, &c., with intent to commit forgery punishable otherwise.

- 474.** Whoever has in his possession any document knowing the same to be forged, and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document is one of the description mentioned in section 466 of this Code, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and, if the document is one of the description mentioned in section 467, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ditto.

Having possession of document described in section 466 or 467, knowing it to be forged, and intending to use it as genuine.

Knowing the same to be forged, and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document is one of the description mentioned in section 466 of this Code, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and, if the document is one of the description mentioned in section 467, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.
Uncog.
Warrant.
Bailable.
Not comp.
Sanction.

475. Whoever counterfeits upon or in the substance

of any material any device or mark used for the purpose of authenticating any document described in section 467, or possessing counterfeit-marked material.

used for the purpose of authenticating any document described in section 467 of this Code, intending that such device or mark shall be used for the purpose of

giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon, or in the substance of, which any such device or mark has been counterfeited, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.
Uncog.
Warrant.
Not bailable.
Not comp.
Sanction.

476. Whoever counterfeits upon or in the substance

of any material any device or mark used for the purpose of authenticating any document other than the documents described in section 467, of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon, or in the substance of, which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

of any material any device or mark used for the purpose of authenticating any document other than the documents described in section 467, of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon, or in the substance of, which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.
Uncog.
Warrant.
Not bailable.
Not comp.

477. Whoever fraudulently or dishonestly, or with

intent to cause damage or injury to the public or to any person, cancels, destroys, or defaces, or attempts to cancel, destroy, or deface, or secretes, or attempts to secrete, any document which is, or purports to be, a will, or an authority to adopt a son, or any valuable security, or commits mischief in res-

fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels, destroys, or defaces, or attempts to cancel, destroy, or deface, or secretes, or attempts to secrete, any document

which is, or purports to be, a will, or an authority to adopt a son, or any valuable security, or commits mischief in res-

pect to such document, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

477A.* Whoever, being a clerk, officer, or servant, Ct. of Ses.
Uncog.
Warrant,
Not bail-
able.
Not com
Falsification of or employed or acting in the capacity
accounts. of a clerk, officer, or servant, wilfully,
and with intent to defraud, destroys, alters, mutilates, or
falsifies any book, paper, writing, valuable security, or
account which belongs to, or is in the possession of, his
employer, or has been received by him for or on behalf of his
employer, or wilfully, and with intent to defraud, makes or
abets the making of any false entry in, or omits or alters,
or abets the commission or alteration of, any material
particular from or in any such book, paper, writing, valu-
able security, or account, shall be punished with imprison-
ment of either description for a term which may extend to
seven years, or with fine, or with both.

Explanation.—It shall be sufficient in any charge under this section to allege a general intent to defraud without naming any particular person intended to be defrauded, or specifying any particular sum of money intended to be the subject of the fraud, or any particular day on which the offence was committed.

Of Trade, Property, and Other Marks.†

478. A mark used for denoting that goods are the
Trade-mark. manufacture or merchandise of a
particular person is called a trade-

* S 477A has been added by the Indian Criminal Law Amendment Act (III. of 1895), s. 4.

† This part of Ch. XVIII. (i. e., ss. 478-489) has been substituted for the original by the Indian Merchandise Marks Act (IV. of 1889), s. 3.

As to costs of defence or prosecution, and limitation of prosecutions, under ss 478-489, see Act IV. of 1889, ss. 14, 15.

mark, and for the purposes of this Code, the expression "trade-mark" includes any trade-mark which is registered in the register of trade-marks kept under the Patents, Designs, and Trade-marks Act, 1883,* and any trade-mark which, either with or without registration, is protected by law in any British possession or Foreign State to which the provisions of the one-hundred-and-third section of the Patents, Designs, and Trade-marks Act, 1883,* are, under Order in Council, for the time being applicable.

479. A mark used for denoting that moveable property belongs to a particular person is called a property-mark.
Property-mark.

480. Whoever marks any goods or any case, package, or other receptacle containing goods, or uses any case, package, or other receptacle with any mark thereon, in a manner reasonably calculated to cause it to be believed that the goods so marked, or any goods contained in any such receptacle so marked, are the manufacture or merchandise of a person whose manufacture or merchandise they are not, is said to use a false trade-mark.
Using a false trade-mark.

481. Whoever marks any moveable property or goods, or any case, package or other receptacle containing moveable property or goods, or uses any case, package, or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property-mark.
Using a false property mark.

As to unintentional contravention of ss. 480-482 or 485, see Act IV. of 1889, s. 8.

As to forfeiture of goods on contravention of ss. 482 or 486-488, see Act IV. of 1889, s. 9.

* Stat. 46 & 47 Vict., c. 57.

482. Whoever uses any false trade-mark or any false property-mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of their description for a term which may extend to one year, or with fine, or with both.

Punishment for using a false trade-mark or property-mark.

Presy. Mag., or Mag. of 1st or 2nd class.
Uncog.
Warrant. Bailable.
Not comp.

483. Whoever counterfeits any trade-mark or property-mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Counterfeiting a trade-mark or property-mark used by another.

Ditto.

484. Whoever counterfeits any property-mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a particular person, or at a particular time or place, or that the property is of a particular quality, or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Counterfeiting a mark used by a public servant.

Ct. of Ses., Presy. Mag., or Mag. of 1st class.
Uncog.
Summons. Bailable.
Not comp.

485. Whoever makes or has in his possession any die, plate, or other instrument for the purpose of counterfeiting a trade-mark or property-mark, or has in his possession a trade-mark or property-mark for the purpose of denoting that any goods are the manufacture or merchandise of a person whose manufacture or merchandise they are not, or that they belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Making or possession of any instrument for counterfeiting a trade-mark or property-mark.

Ditto.

Presy. Mag.,
or Mag. of
1st or 2nd
class.
Uncog.
Summons.
Bailable.
Not comp.

486. Whoever sells, or exposes, or has in possession for sale or any purpose of trade or manufacture, any goods or things with a counterfeit trade-mark or property-mark affixed to, or impressed upon, the same, or to or upon any case, package, or other receptacle in which such goods are contained, shall, unless he proves—

(a) that, having taken all reasonable precautions against committing an offence against this section, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the mark, and,

(b) that, on demand made by, or on behalf of, the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(c) that otherwise he had acted innocently,

be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st or 2nd
class.
Uncog.
Summons.
Bailable.
Not comp.

487. Whoever makes any false mark upon any case, package, or other receptacle containing goods, in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain, or that it does not contain goods which it does contain, or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof, shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Ditto

488. Whoever makes use of any such false mark in any manner prohibited by the last foregoing section shall unless he proves that he acted without intent

Punishment for
making use of any
such false mark.

so defraud, be punished as if he had committed an offence against that section.

439. Whoever removes, destroys, defaces, or adds to any property-mark, intending or knowing it to be likely that he may thereby cause injury to any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Tampering with property-mark with intent to cause injury.

Presy. Mag., or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.

*Of Currency-notes and Bank-notes.**

489A. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency-note or bank-note, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Counterfeiting currency-notes or bank-notes.

Ct. of Ses. Cognizable. Warrant. Not bailable. Not com.

Explanation.—For the purposes of this section and of sections 489B, 489C, and 489D, the expression “bank-note” means a promissory note or engagement for the payment of money to bearer on demand issued by any person carrying on the business of banking in any part of the world, or issued by or under the authority of any State or Sovereign Power, and intended to be used as equivalent to, or as a substitute for, money.

439B. Whoever sells to, or buys or receives from, any other person, or otherwise traffics in, or uses as genuine, any forged or counterfeit currency-note or bank-note knowing or having reason to believe the same to be forged or counterfeit, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Using as genuine forged or counterfeit currency-notes or bank-notes.

Ditto.

* Ss. 489A, 489B, 489C, and 439D have been added after s. 489 by the Currency Notes Forgery Act (XII. of 1899), s. 2.

Ct. of Ses.
Cognizable.
Warrant.
Bailable.
Not com.

489C. Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, and intending to use the same as genuine, or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Ct. of Ses.
Cognizable.
Warrant.
Not bailable.
Not com.

489D. Whoever makes, or performs any part of the process of making, or buys or sells or disposes of, or has in his possession, any machinery, instrument, or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging or counterfeiting any currency-note or bank-note, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

CHAPTER XIX.*

OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.

Presy. Mag.
or Mag. of
1st or 2nd
class.
Unco.
Summons.
Bailable.
Comp.

490. Whoever, being bound by a lawful contract to render his personal service in conveying or conducting any person or any property from one place to another place, or to act as servant to any person during a voyage or journey, or to guard any person or property during a voyage or journey, voluntarily omits so to do, except in the case of illness or ill-treatment, shall be punished with

* Cognisance may be taken of an offence under Ch. XIX. only on complaint by an aggrieved party—*See the Code of Criminal Procedure (Act V. of 1898), s. 198.*

Offences punishable under Ch. XIX. are compoundable—*See the Code of Criminal Procedure (Act V. of 1898), s. 345.* As to stage of proceedings at which no composition is allowable without the leave of the Court *see ibid*, sub-s. (5).

imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

Illustrations.

(a.) *A*, a palanquin-bearer, being bound by legal contract to carry *Z* from one place to another, runs away in the middle of the stage: *A* has committed the offence defined in this section.

(b.) *A*, a cooly, being bound by lawful contract to carry *Z*'s baggage from one place to another, throws the baggage away: *A* has committed the offence defined in this section.

(c.) *A*, a proprietor of bullocks, being bound by legal contract to convey goods on his bullocks from one place to another, illegally omits to do so: *A* has committed the offence defined in this section.

(d.) *A*, by unlawful means, compels *B*, a cooly, to carry his baggage. *B*, in the course of the journey, puts down the baggage and runs away: Here, as *B* was not lawfully bound to carry the baggage, he has not committed any offence.

Explanation.—It is not necessary to this offence that the contract should be made with the person for whom the service is to be performed. It is sufficient if the contract is legally made with any person either expressly or impliedly, by the person who is to perform the service.

Illustration.

A contracts with a dak company to drive his carriage for a month. *B* employs the dak company to convey him on a journey, and, during the month, the company supplies *B* with a carriage which is driven by *A*. *A*, in the course of the journey, voluntarily leaves the carriage: Here, although *A* did not contract with *B*, *A* is guilty of an offence under this section.

491. Whoever, being bound by a lawful contract to attend on, or to supply the wants of, any person who, by reason of youth or of unsoundness of mind, or of a disease or bodily weakness, is helpless or incapable of providing for his own safety, or of supplying his own wants, voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

Breach of contract to attend on and supply wants of helpless person.

Presy. Mag., or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Comp.

Presy. Mag.,
or Mag. of
1st or 2nd
class.
Uncog.
Warrant
Bailable.
(Comp.)

492. Whoever, being bound by lawful contract in writing to work for another person as an artificer, workman, or labourer, for a period not more than three years, at any place within British India, to which, by virtue of the contract, he has been, or is to be, conveyed at the expense of such other, voluntarily deserts the service of that other during the continuance of his contract, or, without reasonable cause, refuses to perform the service which he has contracted to perform, such service being reasonable and proper service, shall be punished with imprisonment of either description for a term not exceeding one month, or with fine not exceeding double the amount of such expense, or with both, unless the employer has ill-treated him, or neglected to perform the contract on his part.

CHAPTER XX.*

OF OFFENCES RELATING TO MARRIAGE.

Ct. of Sess.
Uncog.
Warrant.
Not bail-
able.
Not comp.

493. Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him, and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description

* Cognisance may be taken of an offence under s. 493, 494, 495, or 496, only on complaint by an aggrieved party, and of an offence under s. 497 or 498 only on complaint by the husband or guardian of the woman.—*See* the Code of Criminal Procedure (Act V. of 1898), ss. 198, 199.

Offences punishable under ss. 497 and 498 are compoundable.—*See* *ibid*, s. 345. As to stage of proceedings under ss. 497 and 498 at which no composition is allowable without the leave of the Court, *see* *ibid*, subs. (5).

As to punishment for offences under ss. 497 and 498, enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, *see* the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

for a term which may extend to ten years, and shall also be liable to fine.

464. Whoever, having a husband or wife living, Ct. of Ses.
Uncog.
Warrant.
Bailable.
Not comp.

Marrying again during lifetime of husband or wife.

marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception.—This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time, provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state or facts, so far as the same are within his or her knowledge.

4-5. Whoever commits the offence defined in the last Ct. of Ses.
Uncog.
Warrant.
Not bailable.
Not comp.

Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.

preceding section, having concealed, from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

496. Whoever dishonestly or with a fraudulent intention goes through the ceremony of being married, Ditto.

Marriage-ceremony fraudulently gone through without lawful marriage.

knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st class, &c.
Uncog.
Warrant.
Bailable.
Comp.

497. Whoever has sexual intercourse with a person who is, and whom he knows or has reason to believe to be, the wife of

Adultery.

another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine or with both. In such case the wife* shall not be punishable as an abettor.

Presy. Mag.,
or Mag. of
1st or 2nd
class.
Uncog.
Warrant.
Bailable.
Comp.

498. Whoever takes or entices away any woman,

Enticing or taking
away or detaining
with criminal intent
a married woman.

who is, and whom he knows or has reason to believe to be, the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

CHAPTER XXI.†

OF DEFAMATION.

499. Whoever, by words either spoken or intended to be, read, or by signs, or by visible representations, makes or publishes

Defamation.

* In the Punjab Frontier Districts and Baluchistan, a married woman is punishable for adultery.—See the Punjab Frontier Crimes Regulation (IV. of 1887), s. 32. As to punishment, see also s. 14 of that Regulation.

† Cognisance may be taken of an offence under Ch. XXI. only on complaint by an aggrieved party.—See the Code of Criminal Procedure (Act V. of 1898), s. 198.

Offences punishable under s. 500, 501, or 502 are compoundable.—See *ibid*, s. 345. As to stage of proceedings at which no composition is allowable without the leave of the Court, see *ibid*, sub-s. (5).

For power to order the destruction of copies of the thing in respect of which a conviction under s. 501 or 502 is had, see *ibid*, s. 521.

any imputation concerning any person, intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative, or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation unless that imputation, directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations.

(a) A says, "Z is an honest man; he never stole B's watch," intending to cause it to be believed that Z did steal B's watch: This is defamation unless it fall within one of the exceptions.

(b) A is asked, who stole B's watch? A points to Z, intending to cause it to be believed that Z stole B's watch: This is defamation unless it fall within one of the exceptions.

(c) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch: This is defamation unless it fall within one of the exceptions.

First Exception.—It is not defamation to impute anything which is true concerning any person if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no farther.

Third Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no farther.

Illustration.

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such a meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Fourth Exception.—It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation.—A Justice of the Peace or other officer holding an inquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

Fifth Exception.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness, or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no farther.

Illustrations.

(a.) *A* says, "I think *Z*'s evidence on that trial is so contradictory that he must be stupid or dishonest." *A* is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects *Z*'s character as it appears in *Z*'s conduct as a witness, and no farther.

(b.) But, if *A* says, "I do not believe what *Z* asserted at that trial, because I know him to be a man without veracity" *A* is not within this exception, inasmuch as the opinion which he expresses of *Z*'s character is an opinion not founded on *Z*'s conduct as a witness.

Sixth Exception.—It is not defamation to express in merits of public good faith any opinion respecting the performance. merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author, so far as his character appears in such performance, and no farther.

Explanation.—A performance may be submitted to the judgment of the public expressly, or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations.

(a.) A person who publishes a book submits that book to the judgment of the public.

(b.) A person who makes a speech in public submits that speech to the judgment of the public.

(c.) An actor or singer, who appears on a public stage, submits his acting or singing to the judgment of the public.

(d.) *A* says of a book published by *Z*, "*Z*'s book is foolish, *Z* must be a weak man; *Z*'s book is indecent, *Z* must be a man of impure mind." *A* is within this exception if he says this in good faith, inasmuch as the opinion which he expresses of *Z* respects *Z*'s character only so far as it appears in *Z*'s book, and no farther.

(e.) But, if *A* says, "I am not surprised that *Z*'s book is foolish and indecent, for he is a weak man, and a libertine," *A* is not within this exception, inasmuch as the opinion which he expresses of *Z*'s character is an opinion not founded on *Z*'s book.

Seventh Exception.—It is not defamation in a person having over another any authority, either conferred by law, or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Illustration.

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a school-master, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception.

Eighth Exception.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Illustration.

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father—A is within this exception.

Ninth Exception.—It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good.

Illustrations.

(a.) A, a shop-keeper, says to B, who manages his business, "Sell nothing to Z unless he pays you ready money, for I

have no opinion of his honesty." *A* is within the exception if he has made this imputation on *Z* in good faith for the protection of his own interests.

(*b*) *A*, a Magistrate, in making a report to his superior officer, casts an imputation on the character of *Z*: Here, if the imputation is made in good faith, and for the public good, *A* is within the exception.

Tenth Exception.—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed. or of some person in whom that person is interested, or for the public good.

500. Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Ct. of Ses.,
Presy. Mag.
or Mag. of
1st class.
Uncog.
Warrant.
Bailable.
Comp.

501. Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Ditto.

502. Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Ditto.

CHAPTER XXII.*

OF CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE.

503. Whoever threatens another with any injury to
 Criminal intima- his person, reputation, or property,
 tion. or to the person or reputation of
 any one in whom that person is interested, with intent
 to cause alarm to that person, or to cause that person
 to do any act which he is not legally bound to do, or
 to omit to do any act which that person is legally entitled
 to do, as the means of avoiding the execution of such
 threat, commits criminal intimidation.

Explanation.—A threat to injure the reputation of
 any deceased person in whom the person threatened is
 interested is within this section.

Illustration.

A, for the purpose of inducing B to desist from prosecuting
 a civil suit, threatens to burn B's house: A is guilty of criminal
 intimidation.

Any Mag.
 Uncog. †
 Warrant
 Bailable.
 Comp.

504. Whoever intentionally insults, and thereby gives
 Intentional insult provocation to, any person, intending
 with intent to provoke or knowing it to be likely that such
 breach of the peace. provocation will cause him to break
 the public peace, or to commit any other offence, shall
 be punished with imprisonment of either description for
 a term which may extend to two years, or with fine,
 or with both.

Pres. Mag.,
 or Mag. of
 1st or 2nd
 class.
 Uncog.
 Warrant
 Not bail-
 able.
 Not comp.

505.† Whoever makes, pub-
 lishes, or circulates any statement,
 rumour, or report,—

* An offence punishable under s. 501 and certain offences
 punishable under s. 506 are compoundable.—See the Code of
 Criminal Procedure (Act V. of 1898), s. 345. As to stage of
 proceedings at which no composition is allowable without the
 leave of the Court, see *ib id*, sub-s. (5).

† S. 505 has been substituted for the original by the Indian
 Penal Code Amendment Act (IV. of 1898), s. 6.—See Report of
 Select Committee, *Gazette of India*, Pt. V., p. 15.

- (a) with intent to cause, or which is likely to cause, any officer, soldier, or sailor in the army or navy of Her Majesty, or in the Royal Indian Marine, or in the Imperial Service Troops, to mutiny, or otherwise disregard or fail in his duty as such, or
- (b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public, whereby any person may be induced to commit an offence against the State, or against the public tranquillity; or
- (c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community,

shall be punished with imprisonment, which may extend to two years, or with fine, or with both.

Exception.—It does not amount to an offence within the meaning of this section when the person making, publishing, or circulating any such statement, rumour, or report, has reasonable grounds for believing that such statement, rumour, or report is true, and makes, publishes, or circulates it without any such intent as aforesaid.

506. Whoever commits the offence of criminal intimidation shall be punished* with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

and, if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or transportation, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished† with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

* Presy. Mag., or Mag. of 1st class. Unconv. Warrant. Bailable. Comp.

† Ct. of Ses. Presy. Mag. or Mag. of 1st class. Unconv. Warrant. Bailable. Not comp.

Ct. of Ses.,
Presy. Mag.,
or Mag. of
1st class.
Uncog.
Warrant.
Bailable.
Not comp.

507. Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode

Criminal intimidation by an anonymous communication.

of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last-preceding section.

Presy. Mag.,
or Mag. of
1st or 2nd
class.
Uncog.
Warrant.
Bailable.
Not comp.

Act caused by inducing person to believe that he will be rendered an object of divine displeasure.

508. Whoever voluntarily causes

or attempts to cause any person to do anything which that person is not legally bound to do, or omit to do anything which he is legally entitled to do,

by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become, or will be rendered by some act of the offender, an object of divine displeasure, if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Illustrations.

(a.) A sits dharna at Z's door with the intention of causing it to be believed that, by so sitting, he renders Z an object of divine displeasure. A has committed the offence defined in this section.

(b.) A threatens Z that, unless Z performs a certain act, A will kill one of A's own children under such circumstances that the killing would be believed to render Z an object of divine displeasure: A has committed the offence defined in this section.

Presy. Mag.,
or Mag. of
1st class.
Uncog.
Warrant.
Bailable.
Not comp.

509. Whoever, intending to insult the modesty of any

Word, gesture, or act intended to insult the modesty of a woman.

woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or

intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

510. Whoever, in a state of intoxication, appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten rupees, or with both.

Any Mag.
Uncog.
Warrant.
Bailable.
Not comp.

CHAPTER XXIII.*

OF ATTEMPTS TO COMMIT OFFENCES.

511. Whoever attempts to commit an offence punishable by this Code with transportation or imprisonment, or to cause such an offence to be committed, and, in such attempt, does any act towards the commission of the offence, shall,

Punishment for attempting to commit offences punishable with transportation or imprisonment.

Triable by Court by which the offence attempted is triable. Cog. if offence attempted is cog. Warrant or summons shall issue according as the offence is one in respect of which a Warrant or summons shall ordinarily issue Bailable if offence contemplated is bailable. Compoundable if offence attempted is compoundable.

* NOTE.—Ss. 13 and 15 of the Indian Penal Code Amendment Act (XXVII. of 1870) enact as follows:—

13. [Application of certain chapters of Penal Code.]—The following chapters of the same Code, namely, IV. (*General Exceptions*), V. (*Of Abetment*), and XXIII. (*Of Attempts to commit Offences*) shall apply to offences punishable under the said ss. 121A, 294A, and 304A, and the said Chapters IV. and V. shall apply to offences punishable under "ss. 124A, 225A and 225B." [The words and figures quoted have been substituted for the words and figures "said sections 124A and 225A," by the Second Schedule to the Repealing and Amending Act (XII. of 1891).]

15. [Saving of special and local laws.]—Nothing contained in this Act (XXVII. of 1870) shall be taken to affect any of the provisions of any special or local law.

Attempts to commit certain offences are compoundable.—See the Code of Criminal Procedure (Act V. of 1898), s. 345.

As to stage of proceedings at which no compensation is allowable without the leave of the Court, see *ibid.*, sub-s. (5).

where no express provision is made by this Code for the punishment of such attempt, be punished with transportation or imprisonment of any description provided for the offence, for a term of transportation or imprisonment which may extend to one half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations.

(a.) *A* makes an attempt to steal some jewels by breaking open a box, and finds, after so opening the box, that there is no jewel in it : He has done an act towards the commission of theft, and therefore is guilty under this section.

(b.) *A* makes an attempt to pick the pocket of *Z* by thrusting his hand into *Z*'s pocket. *A* fails in the attempt in consequence of *Z*'s having nothing in his pocket : *A* is guilty under this section.

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SCHEDULE :

ENACTMENTS REPEALED

THE INDIAN EVIDENCE ACT, (No. I. OF 1872).*

(RECEIVED G. G.'S ASSENT ON THE 15TH MARCH 1872.)

WHEREAS it is expedient to consolidate, define, and amend the Law of Evidence; It is hereby enacted as follows:—

Preamble.

PART I.

RELEVANCY OF FACTS.

CHAPTER I.

PRELIMINARY.

1. This Act may be called 'The Indian Evidence Act, 1872:—'

Short title:

It extends to the whole of British India, and applies to all judicial proceedings in or before any Court, including Courts mar-

Extent:

* For the Statement of Objects and Reasons, see *Gazette of India*, 1868, p. 1574; for the Draft or Preliminary Report of the Select Committee dated 31st March 1871, see *ibid.*, 1871, Pt. V, p. 273, and for the Second Report of the Select Committee dated the 30th January 1872, see *ibid.*, 1872, Pt. V., p. 34; for Discussions in Council, see *ibid.*, 1868, Supplement, pp. 1060 and 1209; *ibid.*, 1871, Extra Supplement, p. 42, and Supplement, p. 1641, and *ibid.*, 1872, pp. 136 and 230.

Act I. of 1872 has been declared in force in Upper Burma generally except the Shan States (with an addition) by Act XIII of 1898, s. 4; in the Hill District of Arakan by the Arakan Hill District Laws Regulation (IX. of 1874), s. 3; in British Baluchistan, by the British Baluchistan Laws Regulation (I. of 1890), s. 3; in the Santhal Parganas by the Santhal Parganas Settlement Regulation (III. of 1872), as amended by Reg. III. of 1899, s. 3; in Angul and the Khondmals, by the Angul District Regulation (I. of 1894), s. 3; in the Kachin Hill-tracts, as regards Hill-tribes, by the Kachin Hill District Regulation (I. of 1895), s. 3; in the Chin Hills, as regards Hill-tribes, by the Chin Hills Regulation (V. of 1896), s. 3; and in the Chittagong Hill-tracts by Regulation I. of 1900, s. 4; also, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), in the following Scheduled Districts, namely: The Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dalbhum, and the Kolhan in the District of Singhbhum (see *Gazette of India*, 1881, Pt. I., p. 504); and in the North-Western Provinces Tarai (see *ibid.*, 1876

tial,* but not to affidavits† presented to any Court or officer, nor to proceedings before an arbitrator :

Commencement of Act.

And it shall come into force on the first day of September 1872.

Repeal of enactments.

2. On and from that day, the following laws shall be repealed :—

- (1) all rules of evidence not contained in any Statute, Act, or Regulation in force in any part of British India :
- (2) all such rules, laws and regulations as have acquired the force of law under the twenty-fifth section of "The Indian Councils Act, 1861,"‡ in so far as they relate to any matter herein provided for ; and
- (3) the enactments mentioned in the Schedule hereto, to the extent specified in the third column of the said Schedule :

But nothing herein contained shall be deemed to affect any provision of any Statute, Act, or Regulation in force in any part of British India, and not hereby expressly repealed.

3. In this Act, the following words and expressions are used in the following senses unless a contrary intention appears from the context :—

Interpretation-clause.

Pt. I, 505). The District of Lohardaga included at this time the present District of Palamau, which was separated in 1894.

So much of this Act as relates to the General Clauses Act (I of 1868) was repealed by the General Clauses Act (X. of 1897).

* But see the Army Act (Stat. 44 & 45 Vict., c. 58) s. 127 which is as follows :—

" A Court-martial under this Act shall not, as respects the conduct of its proceedings, or the reception or rejection of evidence, or as respects any other matter or thing whatsoever, be subject to the provisions of the Indian Evidence Act, 1872, or to any Act, law, or ordinance of any Legislature whatsoever other than the Parliament of the United Kingdom."

Act I. of 1872 is (subject to such modifications as the Governor-General in Council may direct) applicable to all proceedings before Indian Marine Courts—See the Indian Marine Act (XIV. of 1887), s. 68.

† The Civil Procedure Code regulates matters to which affidavits are confined.—See Act V. of 1908 ss. 139 and 141, and rr. 1-3 of O. XIX. (First Schedule). See also the Code of Criminal Procedure (Act V. of 1898), s. 539.

‡ Stat. 24 and 25 Vict., c. 67.

“Court” includes all Judges* and Magistrates,† and all persons, except arbitrators, legally authorized to take evidence.

“Fact.” “Fact” means and includes—

(1) any thing, state of things, or relation of things capable of being perceived by the senses;

(2) any mental condition of which any person is conscious.

Illustrations.

(a) That there are certain objects arranged in a certain order in a certain place is a fact.

(b) That a man heard or saw something is a fact.

(c) That a man said certain words is a fact.

(d) That a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, or is or was, at a specified time, conscious of a particular sensation, is a fact.

(e.) That a man has a certain reputation is a fact.

One fact is said to be “relevant” to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

The expression “facts in issue” means and includes any fact from which, either by itself, or in connection with other facts, the existence, non-existence, nature, or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

Explanation.—Whenever, under the provisions of the Law‡ for the time being in force relating to civil procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue.§

* Cf. the Code of Civil Procedure (Act V. of 1908), s. 2 (8), the Indian Penal Code (Act XLV. of 1860), s. 19, and, as to “District Judge,” the General Clauses Act (X. of 1897), s. 3 (15).

† Cf. the General Clauses Act (X. of 1897), s. 3 (31), and the Code of Criminal Procedure (Act V. of 1898), s. 3 (2).

‡ See now the Code of Civil Procedure (Act V. of 1908).

§ With reference to the settlement of issues, see the Code of Civil Procedure (Act V. of 1908), O. XIV. (First Schedule), rr. 1-7.

Illustrations.

A is accused of the murder of B.

At his trial the following facts may be in issue :—

that A caused B's death ;

that A intended to cause B's death ;

that A had received grave and sudden provocation from B ;

that A, at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature.

“ Document ”* means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

Illustrations.

A writing† is a document :

Words printed, lithographed, or photographed are documents :

A map or plan is a document :

An inscription on a metal plate or stone is a document :

A caricature is a document.

“ Evidence.”

“ Evidence ” means and includes—

(1) all statements which the Court permits or requires to be made before it by witnesses in relation to matters of fact under enquiry :

such statements are called oral evidence ;

(2) all documents produced for the inspection of the Court :

such documents are called documentary evidence.

A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

* Cf. s. 29 of the Indian Penal Code (Act XLV. of 1860) and s. 3 (16) of the General Clauses Act (X. of 1897).

† Cf. definition of “ written,” s. 2, Act XIV. of 1882 (the definition is not given in the present Code, Act V., 1908), and “ writing,” s. 3 (58), the General Clauses Act (X. of 1897), and of both in s. 21, the Indian Stamp Act (I of 1879), as modified up to 1st November 1895, as published by the Legislative Department.

See also “ write ” in s. 4 of the Inventions and Designs Act (V. of 1888).

A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

“Not proved.”

A fact is said not to be proved when it is neither proved nor disproved.

4. Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved unless and until it is disproved, or may call for proof of it.

“May presume.”

Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved unless and until it is disproved.

“Shall presume.”

When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

“Conclusive proof.”

CHAPTER II.

OF THE RELEVANCY OF FACTS.

5. Evidence may be given, in any suit or proceeding, of the existence or non-existence of every fact in issue and relevant facts, and of such other facts as are hereinafter declared to be relevant, and of no others.

Explanation.—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the Law* for the time being in force relating to civil procedure.

Illustrations.

(a.) A is tried for the murder of B by beating him with a club with the intention of causing his death :

At A's trial, the following facts are in issue :—

* See now Act V. of 1908.

- A's beating B with the club ;
- A's causing B's death by such beating ;
- A's intention to cause B's death.

(b.) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. The section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.*

6. Facts which, though not in issue, are so connected with a Relevancy of facts forming fact in issue as to form part of the same part of same transaction. transaction, are relevant, whether they occurred at the same time and place, or at different times and places.

Illustrations.

(a.) A is accused of the murder of B by beating him. Whatever was said or done by A or B or by the bystanders, at the beating, or so shortly before or after it, as to form part of the transaction, is a relevant fact.

(b.) A is accused of waging war against the Queen by taking part in an armed insurrection in which property is destroyed, troops are attacked, and gaols are broken open. The occurrence of these facts is relevant as forming part of the general transaction, though A may not have been present at all of them.

(c.) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(d.) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

7. Facts which are the occasion, cause, or effect, immediate Facts which are occasion, or otherwise, of relevant facts or facts in cause, or effect of facts in issue, or which constitute the state of issue. things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Illustrations.

(a) The question is, whether A robbed B :

The facts, that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it, or mentioned the fact that he had it to third persons, are relevant.

* See now Act V. of 1908.

(b.) The question is, whether A murdered B.

Marks on the ground produced by a struggle at or near the place where the murder was committed are relevant facts.

(c.) The question is, whether A poisoned B.

The state of B's health before the symptoms ascribed to poison, and habits of B known to A, which afforded an opportunity for the administration of poison, are relevant facts.

Motive, preparation, and previous or subsequent conduct.

8. Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein, or relevant thereto, and the conduct of any person, and offence against whom is the subject of any proceeding, is relevant, if such conduct influences, or is influenced by, any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1.—The word “conduct” in this section does not include statements unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct is relevant.

Illustrations.

(a) A is tried for the murder of B :

The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public are relevant.

(b) A sues B upon a bond for the payment of money. B denies the making of the bond.

The fact, that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

(c.) A is tried for the murder of B by poison :

The fact, that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(d.) The question is, whether a certain document is the will of A :

The facts, that, not long before the date of the alleged will, A made inquiry into matters to which the provisions of the alleged will relate; that

he consulted vakils in reference to making the will, and that he caused drafts of other wills to be prepared, of which he did not approve are relevant.

(e.) A is accused of a crime :

The facts, that, either before, or at the time of, or after, the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence, or procured the absence, of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(f.) The question is, whether A robbed B :

The facts, that, after B was robbed C said in A's presence—"The police are coming to look for the man who robbed B," and that, immediately afterwards, A ran away, are relevant.

(g.) The question is, whether A owes B rupees 10,000 :

The facts, that A asked C to lend him money, and that D said to C in A's presence and hearing "I advise you not to trust A, for he owes B 10,000 rupees," and that A went away without making any answer, are relevant facts :

(h.) The question is, whether A committed a crime :

The fact, that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.

(i.) A is accused of a crime :

The facts, that, after the commission of the alleged crime, he absconded or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(j.) The question is, whether A was ravished :

The facts, that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact, that, without making a complaint, she said that she had been ravished, is not relevant as conduct under this section, though it may be relevant—

as a dying declaration under section 32, clause (1), or
as corroborative under section 157.

(k.) The question is, whether A was robbed :

The fact, that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact, that he said he had been robbed without making any complaint, is not relevant as conduct under this section, though it may be relevant—

as a dying declaration under section 32, clause (1), or
as corroborative evidence under section 157.

9. Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or introduce relevant facts. Facts necessary to explain or introduce relevant facts, or which established the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant, in so far as they are necessary for that purpose.

Illustrations.

(a) The question is, whether a given document is the will of A :

The state of A's property and of his family at the date of the alleged will may be relevant facts.

(b.) A sues B for a libel imputing disgraceful conduct to A ; B affirms that the matter alleged to be libellous is true :

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(c.) A is accused of a crime :

The fact that, soon after the commission of the crime, A absconded from his house, is relevant, under section 8, as conduct subsequent to, and affected by, facts in issue.

The fact, that, at the time when he left home, he had sudden and urgent business at the place to which he went, is relevant as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(d.) A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service, says to A "I am leaving you, because B has made me a better offer : " This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.

(e.) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says, as he delivers it, " A says you are to hide this : " B's statement is relevant as explanatory of a fact which is part of the transaction.

(f.) A is tried for a riot, and is proved to have marched at the head of a mob :

The cries of the mob are relevant as explanatory of the nature of the transaction.

10. Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence, or an actionable wrong, anything said, done, or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well as for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustrations.

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Queen.

The facts, that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Cabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy, or after he left it.

When facts not otherwise relevant become relevant. **11.** Facts not otherwise relevant are relevant—

- (1) if they are inconsistent with any fact in issue or relevant fact;
- (2) if, by themselves or in connection with other facts, they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.*

Illustrations.

(a.) The question is, whether A committed a crime at Calcutta on a certain day:

The fact, that, on that day, A was at Lahore, is relevant.

The fact, that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(b.) The question is, whether A committed a crime:

* 11 Bom. H. C. R. 90.

The circumstances are such that the crime must have been committed either by A, B, C, or D. Every fact which shows that the crime could have been committed by no one else, and that it was not committed by either B, C, or D, is relevant.

In suits for damages, facts tending to enable Court to determine amount, are relevant.

12. In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded is relevant.

Facts relevant when right or custom is in question.

The following facts are relevant:—

13. Where the question is as to the existence of any right or custom, the

(a) Any transaction by which the right or custom in question was created, claimed, modified, recognized asserted, or denied, or which was inconsistent with its existence :

(b) Particular instances in which the right or custom was claimed, recognized, or exercised, or in which its exercise was disputed, asserted, or departed from.

Illustration.

The question is, whether A has a right to a fishery : A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father irreconcilable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

14. Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will, or good-will, towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind, or body, or bodily feeling is in issue or relevant.

**Explanation 1.*—A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question.

* This *Explanation* has been substituted for the original by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s 1 (1).

* *Explanation 2.*—But, where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact.†

Illustrations.

(a.) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article

The fact, that, at the same time, he was in possession of many other stolen articles, is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

‡ (b) A is accused of fraudulently delivering to another person a counterfeit coin, which, at the time when he delivered it, he knew to be counterfeit :

The fact that at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin, is relevant.

The fact, that A had been previously convicted of delivering to another person as genuine a counterfeit coin knowing it to be counterfeit, is relevant §

(c.) A sues B for damage done by a dog of B's, which B knew to be ferocious :

The facts, that the dog had previously bitten X., Y., and Z., and that they had made complaints to B, are relevant.

(d.) The question is, whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact, that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant as showing that A knew that the payee was a fictitious person.

(e) A is accused of defaming B by publishing an imputation intended to harm the reputation of B :

The fact of previous publications by A respecting B showing ill-will on the part of A towards B is relevant as proving A's intention to harm B's reputation by the particular publication in question.

The facts, that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant as showing that A did not intend to harm the reputation of B.

* This *Explanation* has been substituted for the original by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 1 (1).

† See the Code of Criminal Procedure (Act V. of 1898), s. 31.

‡ The present *Ill. (b)* has been substituted for the original by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 1 (2).

§ Compare s. 311 of the Code of Criminal Procedure (Act V. of 1898).

(f) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss :

The fact that, at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours, and by persons dealing with him, is relevant as showing that A made the representation in good faith.

(g) A is sued by B for the price of work done by B upon a house, of which A is owner, by the order of C, a contractor.

A's defence is, that B's contract was with C :

The fact, that A paid C for the work in question is relevant as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A

(h) A is accused of the dishonest misappropriation of property which he had found, and the question is, whether, when he appropriated it, he believed in good faith that the real owner could not be found :

The fact, that public notice of the loss of the property had been given in the place where A was is relevant as showing that A did not, in good faith, believe that the real owner of the property could not be found.

The fact, that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property, and wished to set up a false claim to it, is relevant as showing that the fact that A knew of the notice did not disprove A's good faith.

(i). A is charged with shooting at B with intent to kill him :

In order to show A's intent, the fact of A's having previously shot at B may be proved.

(j.) A is charged with sending threatening letters to B :

Threatening letters previously sent by A to B may be proved as showing the intention of the letters.

(k.) The question is, whether A has been guilty of cruelty towards B, his wife .

Expressions of their feeling towards each other shortly before or after the alleged cruelty are relevant facts.

(l.) The question is, whether A's death was caused by poison :

Statements made by A during his illness as to his symptoms are relevant facts.

(m.) The question is, what was the state of A's health at the time when an assurance on his life was effected :

Statements made by A as to the state of his health at or near the time in question are relevant facts.

(n.) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured :

The fact, that B's attention was drawn on other occasions to the defect of that particular carriage, is relevant.

The fact, that B was habitually negligent about the carriages which he let to hire, is irrelevant.

(o.) A is tried for the murder of B by intentionally shooting him dead :

The fact, that A, on other occasions, shot at B, is relevant as showing his intention to shoot B.

The fact, that A was in the habit of shooting at people with intent to murder them, is irrelevant.

(p.) A is tried for a crime :

The fact, that he said something indicating an intention to commit that particular crime, is relevant.

The fact, that he said something indicating a general disposition to commit crimes of that class, is irrelevant.

15. When there is a question whether an act was accidental or

intentional "or done with a particular knowledge or intention."* the fact, that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Illustrations.

(a.) A is accused of burning down his house in order to obtain money for which it is insured.

The facts, that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and, after each of which fires, A received payment from a different insurance office, are relevant as tending to show that the fires were not accidental.

(b.) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that, on a particular occasion, he received less than he really did receive :

The question is, whether this false entry was accidental or intentional :

The facts, that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(c.) A is accused of fraudulently delivering to B a counterfeit rupee :

The question is, whether the delivery of the rupee was accidental :

The facts, that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D, and E, are relevant as showing that the delivery to B was not accidental.

* In s. 15, the words quoted have been inserted by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 2.

16. When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

Existence of course of business when relevant.

Illustrations.

(a.) The question is, whether a particular letter was despatched :

The facts, that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place, are relevant.

(b.) The question is, whether a particular letter reached A : The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

ADMISSIONS.

17. An "admission" is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

18. Statements made by a party to the proceeding, or by an Admission—by party to agent to any such party whom the Court proceeding or his agent ; regards, under the circumstances of the case, is expressly or impliedly authorized by him to make them, are admissions.

Statements made by parties to suits, suing or sued in a representative character, are not admissions unless they were made while the party making them held that character.

Statements made by—

(1) persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, by party interested in subject-matter ; and who make the statements in their character of persons so interested, or

(2) persons from whom the parties to the suit have derived their interest in the subject-matter of the suit, by person from whom interest derived.

are admissions if they are made during the continuance of the interest of the persons making the statements.

19. Statements made by persons whose position or liability

Admissions by persons whose position must be proved as against party to suit. it is necessary to prove as against any party to the suit are admissions if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position, or is subject to such liability.

Illustrations.

A undertakes to collect rents for B.

B sues A for not collecting rent due from C to B.

A denies that rent was due from C to B:

A statement by C that he owed B rent is an admission, and is a relevant fact as against A if A denies that C did owe rent to B.

20. Statements made by persons to whom a party to the

Admissions by persons expressly referred to by party to suit. suit has expressly referred for information in reference to a matter in dispute are admissions.

Illustrations.

The question is, whether a horse sold by A to B is sound:

A says to B, "Go and ask C; C knows all about it:" C's statement is an admission.

21. Admissions are relevant, and may be proved as against

Proof of admissions against persons making them, and not by or on their behalf. the person who makes them, or his representative in interest;* but they cannot be proved by, or on behalf of, the person who makes them, or by his representative in interest, except in the following cases:—

(1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32.

(2) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

- (3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

Illustrations.

(a) The question between A and B is, whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged :

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged : But A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

(b) A, the captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course

A produces a book kept by him in the ordinary course of his business showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove those statements, because they would be admissible between third parties, if he were dead, under section 32 clause (2).

(c.) A is accused of a crime committed by him at Calcutta. He produces a letter written by himself, and dated at Lahore on that day, and bearing the Lahore post-mark of that day :

The statement in the date of the letter is admissible, because, if A were dead, it would be admissible under section 32, clause (2).

(d.) A is accused of receiving stolen goods, knowing them to be stolen.

He offers to prove that he refused to sell them below their value :

A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(e.) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin, as he doubted whether it was counterfeit or not ; and that that person did examine it, and told him it was genuine :

A may prove these facts for the reasons stated in the last-preceding illustration.

22. Oral admissions as to the contents of a document are

When oral admissions as to the contents of documents are relevant. not relevant unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

23. In civil cases no admission is relevant if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

Explanation.—Nothing in this section shall be taken to exempt any barrister, pleader, attorney, or vakil from giving evidence of any matter of which he may be compelled to give evidence under section 126.

24. A confession made by an accused person is irrelevant in a criminal proceeding if the making of the confession appears to the Court to have been caused by any inducement,* threat, or promise, having reference to the charge against the accused person, proceeding from a person in authority,† and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that, by making it, he would gain any advantage, or avoid any evil of a temporal nature in reference to the proceedings against him.

Confession to police-officer not to be proved. **25.** No confession made to a police-officer‡ shall be proved as against a person accused of any offence.

26. No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

Explanation.§—In this section “Magistrate” does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George, or in Burma or elsewhere, unless such

* For prohibition of such inducements, &c., see the Code of Criminal Procedure (Act V. of 1898), s. 343.

† 9 Bom. H. C. R. 358.

‡ In s 25, as in force in Upper Burma, the words, “who is not a Magistrate,” shall be deemed to have been inserted after “police-officer” [see the Upper Burma Laws Act (XX. of 1886), s. 7 (1) (d).] As to statement made to a police-officer investigating a case, see the Code of Criminal Procedure (Act V. of 1898), ss. 161 and 162.

§ This *Explanation* has been added to s. 26 by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 3.

headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882.*

27. Provided that, when any fact is deposed to as discovered in consequence of information received from accused may be proved. from a person accused of any offence in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

28. If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat, or promise has, in the opinion of the Court, been fully removed, it is relevant.

29. If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession: and that evidence of it might be given against him.

30. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other persons, as well as against the person who makes such confession.†

Explanation.‡—"Offence," as used in this section, includes the abetment of, or attempt to commit, the offence.§

* Act X. of 1882.—But see now the new Code of Criminal Procedure (Act V. of 1898).

† 10 Bom. H. C. R. 499; 19 Suth. W. R. (Cr.) 23.

‡ This *Explanation* has been inserted in s. 30 by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 4.

§ Compare *Explanation* 4 to s. 108 of the Indian Penal Code (Act XLV. of 1860).

Illustrations.

(a.) A and B are jointly tried for the murder of C. It is proved that A said, 'B and I murdered C.' The Court may consider the effect of this confession against B.

(b.) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said, "A and I murdered C."

This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

31. Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained.

Admissions not conclusive proof, but may estop.

STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES.

32. Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:—

Cases in which statement of relevant fact by person who is dead or cannot be found, &c., is relevant—

(1) When the statement is made by a person as to the cause when it relates to cause of death; or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant, whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2) When the statement was made by such person in the or is made in course of ordinary course of business, and, in particular, when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment, written or signed by him, of the receipt of money, goods, securities, or property of any kind; or of a document used in commerce, written or signed by him, or of the date of a letter or other document usually dated, written, or signed by him.

(3) When the statement is against the pecuniary or proprietary or against interest of interest of the person making it, or when, maker; if true, it would expose him, or would have exposed him, to a criminal prosecution, or to a suit for damages.

(4) When the statement gives the opinion of any such person or gives opinion as to as to the existence of any public right or public right or custom, or custom or matter of public or general matters of general interest; interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom, or matter had arisen.

(5) When the statement relates to the existence of any relation or relates to existence of ship "by blood, marriage or adoption,"* relationship; between persons as to whose relationship "by blood, marriage, or adoption,"* the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

(6) When the statement relates to the existence of any relation-ship "by blood, marriage, or adoption"* or is made in will or deed ship "by blood, marriage, or adoption"* relating to family-affairs; between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family-pedigree, or upon any tombstone, family-portrait, or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

or in document relating to transaction mentioned in section 13, clause (a);

is mentioned in section 13, clause (a)

or is made by several persons and expresses feelings relevant to matter in question.

(7) When the statement is contained in any deed, will, or other document which relates to any such transaction as

(8) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations.

(a.) The question is, whether A was murdered by B; or

* In s. 32 (5) and (6), the words quoted have been inserted by the Indian Evidence Act (1872) Amendment Act (XVIII. of 1872), s. 2.

A dies of injuries received in a transaction in the course of which she was ravished. The question is, whether she was ravished by B; or

the question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow :

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape, and the actionable wrong under consideration, are relevant facts.

(b.) The question is as to the date of A's birth :

An entry in the diary of a deceased surgeon, regularly kept in the course of business, stating that, on a given day, he attended A's mother and delivered her of a son, is a relevant fact.

(c.) The question is, whether A was in Calcutta on a given day :

A statement in the diary of a deceased solicitor, regularly kept in the course of business, that, on a given day, the solicitor attended A at a place mentioned, in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

(d.) The question is, whether a ship sailed from Bombay harbour on a given day :

A letter written by a deceased member of a merchant's firm, by which she was chartered, to their correspondents in London to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

(e.) The question is, whether rent was paid to A for certain land :

A letter from A's deceased agent to A, saying that he had received the rent on A's account, and held it at A's orders, is a relevant fact.

(f.) The question is, whether A and B were legally married.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime is relevant.

(g.) The question is, whether A, a person who cannot be found, wrote a letter on a certain day :

The fact that a letter written by him is dated on that day is relevant.

(h.) The question is, what was the cause of the wreck of a ship :

A protest made by the captain whose attendance cannot be procured is a relevant fact.

(i.) The question is, whether a given road is a public way :

A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

(j.) The question is, what was the price of grain on a certain day in a particular market : A statement of the price, made by a deceased *bania* in the ordinary course of his business, is a relevant fact.

(k.) The question is, whether A, who is dead, was the father of B :

A statement by A that B was his son is a relevant fact.

(l.) The question is, what was the date of the birth of A :

A letter from A's deceased father to a friend announcing the birth of A on a given day is a relevant fact.

(m.) The question is, whether and when A and B were married :

An entry in a memorandum-book by C, the deceased father of B, or his daughter's marriage with A on a given date, is a relevant fact.

(n.) A sues B for a libel expressed in a painted caricature exposed in a shop-window. The question is as to the similarity of the caricature and its libellous character : The remarks of a crowd of spectators on these points may be proved.

33. Evidence given by a witness in a judicial proceeding, or

before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable.*

Provided—

that the proceeding was between the same parties or their representatives in interest ;

that the adverse party in the first proceeding had the right and opportunity to cross-examine ;

that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES.

34.† Entries in books of account, regularly kept in the course

of business, are relevant whenever they refer to a matter into which the Court

* See *Queen v. Mowjan*, 20 Suth. W. R. Cr. R. 69.

† Compare s. 198 of the Indian Companies Act (VI. of 1882) and r. 17 of O. VII. (First Schedule) of the Code of Civil Procedure (Act V. of 1908) as to admissibility in evidence of certified copies of entries in Bankers' books, see s. 4 of the Bankers' Books Evidence Act (XVIII. of 1891), *infra*.

has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Illustration.

A sues B for Rs. 1,000, and shows entries in his account-books showing B to be indebted to him to this amount: The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

35. An entry in any public or other official book, register, or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law or the country in which such book, register, or record is kept, is itself a relevant fact.

36. Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts, or plans, are themselves relevant facts.

37. When the Court has to form an opinion as to existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament, or in any Act of the Governor-General of India in Council, or of the Governors in Council of Madras or Bombay, or of the Government appearing in the *Gazette of India*, or in the gazette of any Local Government, or in any printed paper purporting to be the *London Gazette* or the Government Gazette of any colony or possession of the Queen, is a relevant fact.

*This section also applies to any Act of the Lieutenant-Governor in Council of the North-Western Provinces and Oudh, the Punjab, or Burma.**

38. When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority

* To s. 37, the italicized paragraph has been added by the Indian Evidence Act (V. of 1899), s. 2.

of the Government of such country, and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

HOW MUCH OF A STATEMENT IS TO BE PROVED.

39. When any statement of which evidence is given forms

What evidence to be given when statement forms part of a conversation, document, book, or series of letters or papers.

part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much, and no more, of the statement, conversation, document, book, or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

JUDGMENTS OF COURTS OF JUSTICE WHEN RELEVANT.

40. The existence of any judgment, order, or decree, which,

Previous judgments relevant to bar a second suit or trial.

by law, prevents any Court from taking cognisance of a suit, or holding a trial, is a relevant fact, when the question is whether such Court ought to take cognisance of such suit, or to hold such trial.

41. A final judgment, order, or decree of a competent Court

Relevancy of certain judgments in probate, &c., jurisdiction.

in the exercise of probate, matrimonial, admiralty, or insolvency jurisdiction, which confers upon, or takes away from, any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person, but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order, or decree, is conclusive proof—

that any legal character which it confers accrued at the time when such judgment, order, or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, "order, or decree" * declares it to have accrued to that person;

* In s. 41, the words quoted, wherever they occur, have been inserted by the Indian Evidence Act (1872) Amendment Act (XVIII. of 1872), s. 3.

that any legal character which it takes away from any such person ceased at the time from which such judgment, "order, or decree"* declared that it had ceased or should cease;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, "order, or decree" * declares that it had been or should be his property.

42. Judgments, orders, or decrees other than those mentioned

Relevancy and effect of judgments, orders, or decrees, other than those mentioned in section 41.

in section 31 are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders, or decrees are not conclusive proof of that which they state.†

Illustration.

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

43. Judgments, orders, or decrees other than those mentioned

Judgments, &c., other than those mentioned in sections 40 to 42, when relevant.

in sections 40, 41, and 42, are irrelevant, unless the existence of such judgment, order, or decree, is a fact in issue, or is relevant under some other provision of this Act.

Illustrations.

(a.) A and B separately sue C for a libel which reflects upon each of them. C, in each case, says that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(b.) A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife, but the Court convicts B of adultery.

Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was A's wife.

* In s. 41, the words quoted, wherever they occur, have been inserted by the Indian Evidence Act (1872) Amendment Act (XVIII. of 1872), s. 3.

† 22 Suth. W. R. Cr. R. 365.

The judgment against B is irrelevant as against C.

(c.) A prosecutes B for stealing a cow from him. B is convicted.

A, afterwards, sues C for the cow which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

(d.) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence.

The existence of the judgment is relevant as showing motive for a crime.

(e.) * A is charged with theft, and with having been previously convicted of theft. The previous conviction is relevant as a fact in issue.

(f.) * A is tried for the murder of B. The fact, that B prosecuted A for libel, and that A was convicted and sentenced, is relevant under section 8 as showing the motive for the fact in issue.

44. Any party to a suit or other proceeding may show that

Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved. any judgment, order, or decree, which is relevant under section 40, 41, or 42, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

OPINIONS OF THIRD PERSONS, WHEN RELEVANT.

45.† When the Court has to form an opinion upon a point

Opinions of experts. of foreign law, or of science or art, or as to identity of handwriting or *finger impressions*, the opinions upon that point of persons specially skilled in such foreign law, science, or art, "or in questions as to identity of handwriting" or *finger impressions*, are relevant facts.

Such persons are called experts.

Illustrations.

(a.) The question is, whether the death of A was caused by poison :

The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died are relevant.

(b.) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law :

* To s. 43, *Ills.* (e) and (f) have been added by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 5.

† In s. 45, the words quoted have been inserted by the Indian Evidence Act (1872) Amendment Act (XVIII. of 1872), s. 4, and the italicized words have been inserted by the Indian Evidence Act (V. of 1899), s. 3 (r).

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(c.) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A:

The opinions of experts on the question whether the two documents were written by the same persons or by different persons are relevant.

46. Facts, not otherwise relevant, are relevant if they support Facts bearing upon opi- or are inconsistent with the opinions of nions of experts. experts, when such opinions are relevant.

Illustrations.

(a.) The question is, whether A was poisoned by a certain poison :

The fact, that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(b.) The question is, whether an obstruction to a harbour is caused by a certain sea-wall.

The fact, that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

47. When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed, that it was or was not written or signed by that person, is a relevant fact.

Explanation.—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority, and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

Illustration.

The question is, whether a given letter is in the handwriting of A, a merchant in London.

B is a merchant in Calcutta who has written letters addressed to A, and received letters purporting to be written by him. C is B's clerk, whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon :

The opinions of B, C, and D, on the question whether the letter is in the handwriting of A, are relevant, though neither B, C, nor D ever saw A write.

48. When the Court has to form an opinion as to the existence

Opinion as to existence of of any general custom or right, the right or custom when relevant. opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant.

Explanation.—The expression, “ general custom or right,” includes customs or rights common to any considerable class of persons.

Illustration.

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

Opinion as to usages, tenets,
&c., when relevant.

49. When the Court has to form an opinion as to—

the usages and tenets of any body of men or family,
the constitution and Government of any religious or charitable foundation, or
the meaning of words or terms used in particular districts, or by particular classes of people,
the opinions of persons having special means of knowledge thereon, are relevant facts.

50. When the Court has to form an opinion as to the re-

Opinion on relationship relationship of one person to another, the when relevant. opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact :

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act,* or in prosecutions under section 494, 495, 497, or 498 of the Indian Penal Code.†

* Act IV. of 1869.

† Act XLV. of 1860.

Illustrations.

(a.) The question is, whether A and B were married : The fact, that they were usually received and treated by their friends as husband and wife, is relevant.

(b.) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family is relevant.

51. Whenever the opinion of any living person is relevant, the grounds of opinion on which such opinion is based are also relevant.

Illustration.

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

CHARACTER WHEN RELEVANT.

52. In civil cases the fact, that the character of any person concerned is such as to render probable or improbable any conduct imputed to him, is irrelevant except in so far as such character appears from facts otherwise relevant.

In civil cases character to prove conduct imputed, irrelevant.

In criminal cases, previous good character relevant.

53. In criminal proceedings, the fact that the person accused is of a good character is relevant.

54.* In criminal proceedings, the fact that the accused person has a bad character is irrelevant unless evidence has been given that he has a good character, in which case it becomes relevant.

Previous bad character not relevant except in reply.

Explanation 1.—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

Explanation 2.—A previous conviction is relevant as evidence of bad character.

55. In civil cases, the fact, that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.

Character as affecting damages.

Explanation.—In sections 52, 53, 54, and 55, the word “character” includes both reputation and disposition; but, *except as*

* The present s. 54 has been substituted for the original by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 6.

*provided in section 54,** evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition, were shown.

PART II.—ON PROOF.

CHAPTER III.—FACTS WHICH NEED NOT BE PROVED.

Fact judicially noticeable
need not be proved.

56. No fact of which the Court will take judicial notice need be proved.

Facts of which Court must
take judicial notice.

57. The Court shall take judicial notice of the following facts:—

(1) All laws or rules having the force of law, now or heretofore in force, or hereafter to be in force, in any part of British India;

(2) all public Acts passed or hereafter to be passed by Parliament, and all local and personal Acts directed by Parliament to be judicially noticed;

(3) Articles of War for Her Majesty's Army or Navy;

(4) the course of proceeding of Parliament, and of the Councils for the purposes of making Laws and Regulations established under the Indian Councils Act† or any other law for the time being relating thereto:

Explanation—The word "Parliament," in clauses (2) and (4) includes—

(1) the Parliament of the United Kingdom of Great Britain and Ireland;

(2) the Parliament of Great Britain;

(3) the Parliament of England;

(4) the Parliament of Scotland; and

(5) the Parliament of Ireland;

(5) the accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland;

(6) all seals of which English Courts take judicial notice; the seals of all the Courts of British India, and of all Courts out of

* In the *Explanation* to s. 55, the italicized words have been inserted by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 7.

† Stat. 24 & 25 Vict., c. 67.

British India, established by the authority of the Governor-General* or any Local Government in Council; the seals of Courts of Admiralty and Maritime Jurisdiction, and of Notaries Public; and all seals which any person is authorized to use by any Act of Parliament or other Act or Regulation having the force of law in British India;

(7) the accession to office, names, titles, functions, and signatures of the persons filling, for the time being, any public office in any part of British India if the fact of their appointment to such office is notified in the *Gazette of India*, or in the official gazette of any Local Government;

(8) the existence, title, and national flag of every State or Sovereign recognized by the British Crown;

(9) the divisions of time, the Geographical divisions of the world, and public festivals, fasts, and holidays notified in the official gazette;

(10) the territories under the dominion of the British Crown;

(11) the commencement, continuance, and termination of hostilities between the British Crown and any other State or body of persons;

(12) the names of the members and officers of the Court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders, and other persons authorized by law to appear or act before it;

(13) the rule of the Road "on land or at sea."†

In all these cases,‡ and also on all matters of public history, literature, science, or art, the Court may resort for its aid to appropriate books or documents or reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

* For lists of such Courts, see the Notifications printed on pp. 372 to 374 of the Western India Volume of the Lists of British Enactments in force in Native States.

† The words quoted in s. 37, para. (13), have been inserted by the Indian Evidence Act (1872) Amendment Act (XVIII. of 1872), s. 5.

‡ For an additional case, see the Code of Civil Procedure (Act V. of 1908) s. 84.

58. No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which, by any rule of pleading in force at the time, they are deemed to have admitted by their pleadings :

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

CHAPTER IV.

OF ORAL EVIDENCE.

59. All facts, except the contents of documents, may be proved by oral evidence.

60. Oral evidence must, in all cases whatever, be direct ; that is to say,—

if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it ;

if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it ;

if it refers to a fact which could be perceived by any other sense, or in any other manner, it must be the evidence of a witness who says he perceived it by that sense, or in that manner ;

if it refers to an opinion, or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds :

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatise, if the author is dead, or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable :

Provided, also, that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

CHAPTER V.

OF DOCUMENTARY EVIDENCE.

Proof of contents of documents.

61. The contents of documents may be proved either by primary or by secondary evidence.

Primary evidence.

62. Primary evidence means the document itself produced for the inspection of the Court.

Explanation 1.—Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in counterparts, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2.—Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.

Illustration.

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Secondary evidence.

63. Secondary evidence means and includes—

- (1) certified copies given under the provisions hereinafter contained;*
- (2) copies made from the original by mechanical processes, which, in themselves, insure the accuracy of the copy, and copies compared with such copies;
- (3) copies made from, or compared with, the original;
- (4) counterparts of document as against the parties who did not execute them;
- (5) oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations.

(a.) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(b.) A copy compared with a copy [of a letter made by a copying-machine is secondary evidence of the contents of the letter if it is shown that the copy made by the copying-machine was made from the original.

(c.) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence, but the copy not so compared is not secondary evidence, of the original, although the copy from which it was transcribed was compared with the original.

(d.) Neither an oral account of a copy compared with the original nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

Proof of documents by
primary evidence.

64. Documents must be proved by primary evidence except in the cases hereinafter mentioned.

Cases in which secondary evidence relating to documents may be given.

65. Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:—

- (a) When the original is shown or appears to be in the possession or power—
 - of the person against whom the document is sought to be proved, or
 - of any person out of reach of, or not subject to, the process of the Court, or
 - of any person legally bound to produce it,
 - and when, after the notice mentioned in section 66, such person does not produce it;
- (b) when the existence, condition, or contents of the original have been proved to be admitted in writing by the person against whom it is proved, or by his representative in interest;
- (c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;
- (d) when the original is of such a nature as not to be easily moveable;

- (e) when the original is a public document within the meaning of section 74 ;
- (f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in British India, to be given in evidence ;
- (g) when the originals consists of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c), (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

66. Secondary evidence of the contents of the documents

Rules as to notice to produce. referred to in section 65, clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, "or to his attorney or pleader,"* such notice to produce it as is prescribed by law ; and, if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case :

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it :—

- (1) When the document to be proved is itself a notice ;
- (2) when, from the nature of the case, the adverse party must know that he will be required to produce it ;
- (3) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force ;

* In s. 66, the words quoted have been inserted by Act XVIII. of 1872, s. 6.

- (4) when the adverse party or his agent has the original in Court ;
- (5) when the adverse party or his agent has admitted the loss of the document ;
- (6) when the person in possession of the document is out of reach of, or not subject to, the process of the Court.

67. If a document is alleged to be signed or to have been written, wholly or in part, by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

Proof of signature and handwriting of person alleged to have signed or written document produced.

68. If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution if there be an attesting witness alive and subject to the process of the Court, and capable of giving evidence.

Proof of execution of document required by law to be attested.

69. If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

Proof where no attesting witness found.

70. The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

Admission of execution by party to attested document.

71. If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

Proof when attesting witness denies the execution.

72. An attested document not required by law to be attested may be proved as if it was unattested.

Proof of document not required by law to be attested.

73. In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person, may be compared with the one which is to be proved although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

*This section applies also, with any necessary modifications, to finger impressions.**

PUBLIC DOCUMENTS.

Public documents.

74. The following documents are public documents :—

1. Documents forming the Acts, or records of the Acts—
 - (i) of the sovereign authority,
 - (ii) of official bodies and tribunals, and
 - (iii) of public officers, legislative, judicial, and executive, whether of British India, or of any other part of Her Majesty's dominions, or of a foreign country.
2. Public records kept in British India of private documents.

Private documents.

75. All other documents are private.

76. Every public officer having the custody of a public document which any person has a right to inspect shall give that person, on demand, a copy of it, on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.

* In s. 73, the last paragraph in Italics has been added by the Indian Evidence Act (V. of 1899), s. 3 (2).

Explanation—Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

77. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Proof of other official documents.

78. The following public documents may be proved as follows:—

(1) Acts, orders, or notifications of the Executive Government of British India in any of its departments, or any Local Government or any department of any Local Government—

by the records of the departments, certified by the heads of those departments respectively,

or by any document purporting to be printed by order of any such Government :

(2) The proceedings of the Legislatures—

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of Government :

(3) Proclamations, orders, or regulations issued by Her Majesty, or by the Privy Council, or by any department of Her Majesty's Government—

by copies or extracts contained in the *London Gazette*, or purporting to be printed by the Queen's Printer :

(4) The Acts of the Executive or the proceedings of the Legislature of a foreign country—

by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some public Act of the Governor-General of India in Council :

(5) The proceedings of a municipal body in British India—

by a copy of such proceedings certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body :

(6) Public documents of any other class in a foreign country—

by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a Notary Public, or of a British Consul or Diplomatic Agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

PRESUMPTIONS AS TO DOCUMENTS.

79. The Court shall presume every document purporting to be a certificate, certified copy or other documents which is by law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer in British India, or by any officer in any Native State in alliance with Her Majesty, who is duly authorized thereto by the Governor-General in Council, to be genuine :

Provided that such document is substantially in the form, and purports to be executed in the manner, directed by law in that behalf.

The Court shall also presume that any officer, by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

80. Whenever any document is produced before any Court purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding, or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume—

that the document is genuine ;

that statements as to the circumstances under which it was taken purporting to be made by the person signing it, are true ; and

that such evidence, statement, or confession, was duly taken.

81. The Court shall presume the genuineness of every document purporting to be the *London Gazette*, or the *Gazette of India*, or the Government Gazette of any Local Government, or of any colony, depen-

Presumption as to gazettes, newspapers, private Acts of Parliament, and other documents.

dency, or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by the Queen's Printer, and of every document purporting to be a document directed by any law to be kept by any person, such document is kept substantially in the form required by law, and is produced from proper custody.

82. When any document is produced before any Court, purporting to be a document which, by the law in force for the time being in England or Ireland, would be admissible in proof of any particular in any Court of Justice in England, or Ireland, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp, or signature is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims,

and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

83. The Court shall presume that maps or plans purporting to be made by the authority of Government were so made and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.

84. The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country,

and of every book purporting to contain reports of decisions of the Courts of such country.

85. The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of Her Majesty, or of the Government of India, was so executed and authenticated.

86. The Court may presume that any document purporting

Presumption as to certified copies of foreign judicial records.

to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate if the document purports to be certified in any manner which is certified by any representative of Her Majesty, or of the Government of India, "in or for" such country to be the manner commonly in use in that country for the certification of copies of judicial records.

An officer who, with respect to any territory or place not forming part of Her Majesty's dominions, is a Political Agent therefor, as defined in section 3, clause (40) of the General Clauses Act, 1897, shall, for the purposes of this section, be deemed to be a representative of the Government of India in and for the country comprising that territory or place.†

87. The Court may presume that any book to which it may

Presumption as to books, maps, and charts.

refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts, and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

88. The Court may presume that a message forwarded from

Presumption as to telegraphic messages.

a telegraph office to the person to whom such message purports to be addressed corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

89. The Court shall presume that every document called for,

Presumption as to due execution, &c., of documents not produced.

and not produced after notice to produce, was attested, stamped, and executed in the manner required by law.

* In s. 86, the words quoted have been substituted for the words "resident in," by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 8.

† In s. 86, as amended by s. 8 of the Indian Evidence Act (1872) Amendment Act (III. of 1891), the italicized paragraph has been substituted for the amended paragraph by the Indian Evidence Act (V. of 1899), s. 4.

90. Where any document, purporting or proved to be thirty

Presumption as to documents thirty years old. — years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation.—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section 81.

Illustrations.

(a.) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land showing his titles to it: The custody is proper.

(b.) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession: The custody is proper.

(c.) A, a connection of B produces deeds relating to lands in B's possession, which were deposited with him by B for safe custody: The custody is proper.

CHAPTER VI.

OF THE EXCLUSION OF ORAL BY DOCUMENTARY, EVIDENCE.

91. When the terms of a contract, or of a grant, or of any

Evidence of terms of contracts, grants, and other dispositions of property reduced to form of document. — other disposition of property have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence* shall be given in proof of the terms of such contract, grant, or other disposition of property, or of such matter, except the document itself, or secondary evidence of its

* Evidence may, however, be taken where a Criminal Court finds that a confession or other statement of an accused person has not been recorded in manner prescribed.—See the Code of Criminal Procedure (Act V. of 1898), s. 533.

contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.—Wills “admitted to probate in British India”* may be proved by the probate.

Explanation 1.—This section applies equally to cases in which the contracts, grants, or dispositions of property referred to are contained in one document, and to cases in which they are contained in more documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations.

(a) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(b) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(c.) If a bill of exchange is drawn in a set of three, one only need be proved

(d.) A contracts in writing with B for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other indigo :
The evidence is admissible

(e) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible

92. When the terms of any such contract, grant, or other dis-

Exclusion of evidence of position of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no

* These words in s. 91, *Exception 2*, have been substituted for the words “under the Indian Succession Act” by the Indian Evidence Act Amendment Act (XVIII. of 1872), s. 7.

evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to or subtracting from, its terms:

Proviso 1.—Any facts may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or* failure of consideration, or mistake in fact or law.

Proviso 2.—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso 3.—The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant, or disposition of property, may be proved.

Proviso 4.—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant, or disposition of property may be proved, except in cases in which such contract, grant, or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso 5.—Any usage or custom, by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved: Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso 6.—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations.

(a.) A policy of insurance is effected on goods "in ships from Calcutta to London." The goods are shipped in a particular ship which is lost. The fact, that that particular ship was orally excepted from the policy, cannot be proved.

* In s. 92, *Prov. 1*, the italicized word "or" has been substituted for the word "of" by s. 8 of the Indian Evidence Act (1872) Amendment Act (XVIII. of 1872).

(b.) A agrees absolutely in writing to pay B Rs. 1,000 on the first March 1873. The fact, that, at the same time, an oral agreement was made that the money should not be paid till the thirty-first March, cannot be proved.

(c.) An estate called "the Rampur Tea Estate" is sold by a deed which contains a map of the property sold. The fact, that land not included in the map had always been regarded as part of the estate, and was meant to pass by the deed, cannot be proved.

(d.) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(e.) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(f.) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(g.) A sells B a horse, and verbally warrants him sound. A gives B a paper in these words—"Bought of A a horse for Rs. 500;" B may prove the verbal warranty.

(h.) A hires lodgings of B, and gives B a card on which is written—"Rooms, Rs. 200 a month;" A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly-stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the terms verbally.

(i.) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt, and does not send the money. In a suit for the amount, A may prove this.

(j.) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

93. When the language used in a document is, on its face,

Exclusion of evidence to explain or amend ambiguous document.	ambiguous or defective, evidence may not be given of facts which would show its meaning, or supply its defects.
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Illustrations.

(a.) A agrees, in writing, to sell a horse to B for "Rs. 1,000 or Rs. 1,500:"

Evidence cannot be given to show which price was to be given.

(b.) A deed contains blanks: Evidence cannot be given of facts which would show how they were meant to be filled.

94. When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Illustration.

A sells to B, by deed "my estate at Rampur containing 100 bighas." A has an estate at Rampur containing 100 bighas. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place, and of a different size.

95. When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Illustration.

A sells to B, by deed, "my house in Calcutta."

A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed :

These facts may be proved to show that the deed related to the house at Howrah.

96. When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Illustrations.

(a.) A agrees to sell to B, for Rs. 1,000, "my white horse." A has two white horses : Evidence may be given of facts which show which of them was meant.

(b.) A agrees to accompany B to Haidrabad : Evidence may be given of facts showing whether Haidrabad in the Deccan or Haidrabad in Sindh was meant.

97. When the language used applies partly to one set of existing facts and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Illustration.

A agrees to sell to B "my land at X in the occupation of Y." A has land at X, but not in the occupation of Y; and he has land in the occupation of Y, but it is not at X: Evidence may be given of facts showing which he meant to sell.

98 Evidence may be given to show the meaning of illegible

Evidence as to meaning of illegible character, &c., of foreign, obsolete, technical, local, and provincial expressions of abbreviations, and of words used in a peculiar sense.

Illustration.

A, a sculptor, agrees to sell to B 'all my mods.' A has both models and modeling tools: Evidence may be given to show which he meant to sell.

99. Persons, who are not parties to a document or their

Who may give evidence of agreement varying terms of document. representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

Illustration.

A and B Make a contract in writing that B shall sell A certain cotton to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to A: This could not be shown as between A and B, but it might be shown by C if it affected his interests.

100. Nothing in this chapter contained shall be taken to

Saving of provisions of Indian Succession Act relating to wills. affect any of the provisions of the Indian Succession Act (X. of 1865) as to the construction of wills.

PART III.—PRODUCTION AND EFFECT OF EVIDENCE.

CHAPTER VII.—OF THE BURDEN OF PROOF.

101. Whoever desires any Court to give judgment as to any

Burden of proof.

legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations.

(a.) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed :

A must prove that B has committed the crime

(b.) A desires a Court to give judgment that he is entitled to certain land in the possession of B by reason of facts which he asserts, and which B denies, to be true

A must prove the existence of those facts.

102. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Illustrations.

(a.) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession :

Therefore the burden of proof is on A.

(b.) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud which A denies.

If no evidence were given on either side, A would succeed, as the bond is not disputed, and the fraud is not proved :

Therefore the burden of proof is on B

103. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustration.

A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C : A must prove the admission.

B wishes the Court to believe that, at the time in question, he was elsewhere : He must prove it.

104. The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Burden of proving fact to be proved to make evidence admissible.

Illustrations.

(a.) A wishes to prove a dying declaration by B: A must prove B's death.

(b.) A wishes to prove, by secondary evidence, the contents of a lost document:

A must prove that the document has been lost.

105. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Illustrations.

(a.) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act:

The burden of proof is on A.

(b.) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control:

The burden of proof is on A.

(c.) Section 325 of the Indian Penal Code provides that, whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section 325:

The burden of proving the circumstances bringing the case under section 335 lies on A.

106. When any fact is specially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations.

(a.) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b.) A is charged with travelling on a railway without a ticket: The burden of proving that he had a ticket is on him.

107. When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

108. "Provided that,"* when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is *shifted to*† the person who affirms it.

109. When the question is, whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships, respectively, is on the person who affirms it.

110. When the question is, whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

111. Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Illustrations.

(a.) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.

(b.) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son: The burden of proving the good faith of the transaction is on the father.

112. The fact, that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining

* In s. 108, the words quoted have been inserted by s. 9, Act XVIII., 1872.

† In s. 108, the italicised words have been substituted for the word "on," by s. 9, Act XVIII., 1872.

unmarried, shall be conclusive proof that he is the legitimate son of that man unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

113. A notification in the *Gazette of India* that any portion of British territory has been ceded to any Native State, Prince, or Ruler,* shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification.

114. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events human conduct, and public and private business, in their relation to the facts of the particular case.

Illustrations.

The Court may presume—

(a) that a man who is in possession of stolen goods soon after the theft is either the thief, or has received the goods knowing them to be stolen, unless he can account for his possession ;

(b) that an accomplice is unworthy of credit unless he is corroborated in material particulars ;

(c) that a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration ;

(d.) that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or state of things usually cease to exist, is still in existence ,

(e.) that judicial and official acts have been regularly performed ,

(f.) that the common course of business has been followed in particular cases ;

(g.) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it ;

(h.) that, if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him ;

(i.) that, when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following in considering whether such maxims do or do not apply to the particular case before it—

* See, for example, *Gazette of India*, Jan. 4, 1873, Pt. I., p. 2.

as to illustration (a.)—a shopkeeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business,

as to illustration (b.)—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery B, a person of equally good character, who also took part in the arrangement, describes precisely what was done and admits and explains the common carelessness of A and himself,

as to illustration (b) —a crime is committed by several persons: A, B and C, three of the criminals are captured on the spot, and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable;

as to illustration (c) —A the drawer of a bill of exchange, was a man of business. B the acceptor, was a young and ignorant person, completely under A's influence;

as to illustration (d) —it is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course;

as to illustration (e) —a judicial act, the regularity of which is in question, was performed under exceptional circumstances;

as to illustration (f.) —the question is, whether a letter was received it is shown to have been posted, but the usual course of the post was interrupted by disturbances;

as to illustration (g) —a man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family;

as to illustration (h.) —a man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked;

as to illustration (i.) —a bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

CHAPTER VIII.—ESTOPPEL.

115. When one person has, by his declaration, act, or omission, intentionally caused or permitted another person to believe a thing to be true, and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration.

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title: He must not be allowed to prove his want of title.

116. No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person and of license of person in who came upon any immovable property by the license of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such license was given.

117. No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill, or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment, or grant such license.

Explanation 1.—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation 2.—If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

CHAPTER IX.—OF WITNESSES.

118. All persons shall be competent to testify unless the Court considers that they are prevented from understanding the question put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Who may testify.

Explanation.—A lunatic is not incompetent to testify unless he is prevented by his lunacy from understanding the questions put to him, and giving rational answers to them.

119. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing, or by sign; but such writing must be written, and the signs made, in open Court. Evidence so given shall be deemed to be oral evidence.

120. In all civil proceedings, the parties to the suit, and the Parties to civil suit and husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

121. No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Illustrations.

(a.) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate: B cannot be compelled to answer questions as to this, except upon the special order of a superior Court.

(b.) A is accused before the Court of Session of having given false evidence before B, a Magistrate: B cannot be asked what A said except upon the special order of the superior Court.

(c.) A is accused before the Court of Session of attempting to murder a police-officer whilst on his trial before B, a Sessions Judge: B may be examined as to what occurred.

122. No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it or his representative in interest consents except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

123. No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State except with the permission of the officer at the head of the Department concerned, who shall give or withhold such permission as he thinks fit.

124. No public officer shall be compelled to disclose communications made to him in official confidence when he considers that the public interests would suffer by the disclosure.

125* No Magistrate or police-officer† shall be compelled to say whence he got any information as to the commission of any offence, and no revenue-officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenue.

Explanation.—"Revenue-officer" in this section means any officer employed in or about the business of any branch of the public revenue.

126. No barrister, attorney, pleader, or vakil shall, at any time, be permitted, unless with his client's express consent, to disclose any communication made to him in the course, and for the purpose, of his employment as such barrister, pleader, attorney, or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose, of his professional employment, or to disclose any advice given by him to his client in the course, and for the purpose, of such employment:

Provided that nothing in this section shall protect from disclosure—

(1) any such communication made in furtherance of any illegal‡ purpose;

* Substituted, by Act III. of 1887, for the section originally enacted.

† All the privileges which a police-officer has under s. 125 of this Act have been conferred on a Commandant or Second in Command of Military Police in Burma.—See the Burma Military Police Act (XV. of 1887), s. 13.

‡ The word "illegal" has been substituted for the word "criminal" by the Indian Evidence Act Amendment Act (XVIII. of 1872), s. 10.

(2) any fact observed by any barrister, pleader, attorney, or vakil in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, pleader,* attorney, or vakil was or was not directed to such fact by or on behalf of his client.

Explanation.—The obligation stated in this section continues after the employment has ceased.

Illustrations

(a.) A, a client, says to B, an attorney, "I have committed forgery, and I wish you to defend me."

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(b.) A, a client, says to B, an attorney, "I wish to obtain possession of property by the use of a forged deed on which I request you to sue."

This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(c.) A being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account-book charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment:

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

127. The provisions of section 126 shall apply to interpreters, and the clerks or servants of barristers, pleaders, attorneys, and vakils.

128. If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 126; and, if any party to a suit or proceeding calls any such barrister, pleader,* attorney, or vakil as a witness he shall be deemed to have consented to such disclosure only if he questions such barrister, pleader.*

* In ss. 126 and 128, the word "pleader," wherever it occurs, has been inserted by the Indian Evidence Act (1872) Amendment Act (XVIII. of 1872), s. 10.

attorney, or vakil on matters which, but for such question, he would not be at liberty to disclose.

129. No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

130. No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property, or any document in virtue of which he holds any property as pledgee or mortgagee, or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds, or some person through whom he claims.

131. No one shall be compelled to produce documents in his possession which any other person would be entitled to refuse to produce if they were in his possession unless such last-mentioned person consents to their production.

132. A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit, or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend, directly or indirectly, to criminate, such witness, or that it will expose, or tend, directly or indirectly, to expose, such witness to a penalty or forfeiture of any kind :

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

133. An accomplice shall be a competent witness against an accused person ; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

134. No particular number of witnesses shall, in any case, be required for the proof of any fact.

Number of witnesses.

CHAPTER X.—OF THE EXAMINATION OF WITNESSES.

135. The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

Order of production and examination of witnesses.

136. When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise.

Judge to decide as to admissibility of evidence.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations.

(a.) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under s. 32 :

The fact, that the person is dead, must be proved by the person proposing to prove the statement before evidence is given of the statement.

(b.) It is proposed to prove, by a copy, the contents of a document said to be lost :

The fact, that the original is lost, must be proved, by the person proposing to produce the copy, before the copy is produced.

(c.) A is accused of receiving stolen property knowing it to have been stolen :

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.

(d) It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (B, C, and D), which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue: The Court may either permit A to be proved before B, C, or D is proved, or may require proof of B, C, and D before permitting proof of A.

137. The examination of a witness by the party who calls him shall be called his examination-in-chief.

Cross-examination. The examination of a witness by the adverse party shall be called his cross-examination.

The examination of a witness, subsequent to the cross-examination, by the party who called him, shall be called his re-examination.

133. Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

Order of examinations.

Direction of re-examination.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

139. A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.

Cross-examination of person called to produce a document.

140. Witnesses to character may be cross-examined and re-examined.

Witnesses to character.

141. Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question.
 Leading questions.

142. Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court.
 When they must not be asked.

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

143. Leading questions may be asked in cross-examination.
 When they may be asked.

144. Any witness may be asked, whilst under examination, Evidence as to matters in whether any contract, grant, or other writing. disposition of property as to which he is giving evidence, was not contained in a document; and, if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

Explanation.—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustration.

The question is, whether A assaulted B.

C deposes that he heard A say to D. "B wrote a letter accusing me of theft and I will be revenged on him:" This statement is relevant as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

145. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing,* his attention must, before the writing

* This applies to police-diaries.—See s. 172, Act V. of 1898.

can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

146. When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend—
Questions lawful in cross-examination.

(1) to test his veracity;

(2) to discover who he is, and what is his position in life, or

(3) to shake his credit by injuring his character, although the answer to such questions might tend, directly or indirectly, to criminate him, or might expose, or tend, directly or indirectly, to expose, him to a penalty or forfeiture.

147. If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 132 shall apply thereto.
When witness to be compelled to answer.

148. If any such question relates to a matter not relevant to the suit or proceeding except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations:—
Court to decide when question shall be asked, and when witness compelled to answer.

(1) Such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies:

(2) Such questions are improper if the imputation which they convey relates to matter so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies:

(3) Such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence:

(4) The Court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer, if given, would be unfavourable.

149. No such question as is referred to in section 148 ought to be asked unless the person asking has reasonable grounds for thinking that the imputation which it conveys is well-founded.

Illustrations.

(a.) A barrister is instructed by an attorney or vakil that an important witness is a dakait; This is a reasonable ground for asking the witness whether he is a dakait.

(b.) A pleader is informed by a person in Court that an important witness is a dakait. The informant, on being questioned by the pleader, gives satisfactory reasons for his statement: This is a reasonable ground for asking the witness whether he is a dakait.

(c.) A witness, of whom nothing whatever is known, is asked at random whether he is a dakait. There are here no reasonable grounds for the question.

(d.) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers: This may be a reasonable ground for asking him if he is a dakait.

150. If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, pleader, vakil, or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakil, or attorney is subject in the exercise of his profession.

151. The Court may forbid any questions or inquiries which it regards as indecent or scandalous although such questions or inquiries may have some bearing on the questions before the Court unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

152. The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

153. When a witness has been asked, and has answered, any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, Exclusion of evidence to contradict answers to questions testing veracity.

no evidence shall be given to contradict him; but, if he answers falsely, he may afterwards be charged with giving false evidence.

Exception 1.—If a witness is asked whether he has been previously convicted of any crime, and denies it, evidence may be given of his previous conviction.

Exception 2—If a witness is asked any question tending to impeach his impartiality, and answers it by denying the facts suggested, he may be contradicted.

Illustrations.

(a.) A claim against an underwriter is resisted on the ground of fraud.

The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible.

(b.) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(c.) A affirms that on a certain day he saw B at Lahore.

A is asked whether he himself was not on that day at Calcutta. He denies it.

Evidence is offered to show that A was on that day at Calcutta :

The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore.

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

(d.) A is asked whether his family has not had a blood feud with the family of B against whom he gives evidence.

He denies it: He may be contradicted on the ground that the question tends to impeach his impartiality.

154. The Court may, in its discretion, permit the person who asks a witness to put any questions to him which might be put in cross examination by the adverse party.

155. The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him :—

Impeaching credit of witness.

(1) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit ;

(2) by proof that the witness has been bribed, or has accepted* the offer of a bribe, or has received any other corrupt inducement to give his evidence ;

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted ;

(4) when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

Explanation.—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations.

(a.) A sues B for the price of goods sold and delivered to B. C says that he delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B :

The evidence is admissible.

(b.) A is indicted for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A, or in his presence :

The evidence is admissible.

156. When a witness, whom it is intended to corroborate,

Questions tending to corroborate evidence of relevant fact admissible. gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

* The word "accepted" has been substituted for the word "had" by Act XVIII. of 1872, s. 11.

Illustration.

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed :

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

157. In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

Former statements of witness may be proved to corroborate later testimony as to same fact.

158. Whenever any statement relevant under section 32 or 33 is proved, all matters may be proved, either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness, and had denied upon cross-examination the truth of the matter suggested.

159. A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if, when he read it, he knew it to be correct.

Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document : Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

When witness may use copy of document to refresh memory.

An expert may refresh his memory by reference to professional treatises.

160. A witness may also testify to facts mentioned in any such document as is mentioned in section 159 although he has no specific recollection of the facts themselves if he is sure that the facts were correctly recorded in the document.

Testimony to facts stated in document mentioned in section 159.

Illustration.

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

161.* Any writing referred to under the provisions of the two last-preceding sections must be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness thereupon.

162. A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.

The Court, if it sees fit, may inspect the document unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

If, for such a purpose, it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret unless the document is to be given in evidence: and, if the interpreter disobeys such direction, he shall be held to have committed an offence under section 166 of the Indian Penal Code.

163. When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

164. When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party, or the order of the Court.

* As to the application of s. 161 to police-diaries, see the Code of Criminal Procedure (Act V. of 1898), s. 172.

Illustration.

A sues B on an agreement, and gives B notice to produce it. At the trial, A calls for the document, and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped : He cannot do so.

165. The Judge may, in order to discover, or to obtain proper proof of, relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant ; and may order the production of any document or thing ; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question :

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved :

Provided, also, that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document, which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked, or the document were called for, by the adverse party ; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149 ; nor shall he dispense with primary evidence of any document except in the cases hereinbefore excepted.

166. In cases tried by jury or with assessors, the jury or assessors may put any questions to the witnesses, through or by leave of the Judge, which the Judge himself might put, and which he considers proper.

CHAPTER XI.—OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE.

167. The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case if it shall appear to the Court before

No new trial for improper admission or rejection of evidence.

which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

SCHEDULE.

ENACTMENTS REPEALED.

(*See section 2.*)

Number and year.	Title.	Extent of repeal.
Stat. 26 Geo. III., cap. 57.	For the further regulation of the trial of persons accused of certain offences committed in the East Indies, for repealing so much of an Act made in the twenty fourth year of the reign of His present Majesty (entitled "An Act for the Better Regulation and Management of the Affairs of the East India company, and of the British Possessions in India, and for establishing a Court of Judicature for the more Speedy and Effectual Trial of Persons accused of Offences committed in the East Indies"), as requires the servants of the East India Company to deliver inventories of their estates and effects, for rendering the laws more effectual against persons unlawfully resorting to the East Indies; and for the more easy proof, in certain cases, of deeds and writings executed in Great Britain or India.	Section 38, so far, as it relates to Courts of Justice in the East Indies.
Stat. 14 & 15 Vict., cap 99.	To amend the Law of Evidence.	Section 11, and so much of section 19 as relates to British India.

SCHEDULE—(contd.).

ENACTMENTS REPEALED—(contd.).

(See section 2.)

Number and year.	Title.	Extent of repeal.
Act XV. of 1852.	To amend the Law of Evidence.	So much as has not been heretofore repealed.
Act XIX. of 1853.	To amend the Law of Evidence in the Civil Courts of the East India Company in the Bengal Presidency.	Section 19.
Act II. of 1855.	For the further improvement of the Law of Evidence.	So much as has not been heretofore repealed.
Act XXV. of 1861.	For simplifying the procedure of the Courts of Criminal Judicature not established by Royal Charter.	Section 237.
* * * *	* * * *	* * * *

* The entry relating to ss. 7 and 8 of the General Clauses Act (I. of 1868) has been repealed by the General Clauses Act (X. of 1897).

ACT NO. XVIII. OF 1891.

The Bankers' Books Evidence Act, 1891.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received His Excellency's Assent on the 1st October 1891.)

An Act to amend the Law of Evidence with respect to Bankers' Books.

WHEREAS it is expedient to amend the Law of Evidence with respect to Bankers' Books ; It is hereby enacted as follows :—

Title, extent, and commencement.

1. (1) This Act may be called "The Bankers' Books Evidence Act, 1891."

(2) It extends to the whole of British India ; and

(3) It shall come into force at once.

Definitions.

2. In this Act, unless there is something repugnant in the subject or context,—

(1)* "Company" means a company registered under any of the enactments relating to companies for the time being in force in the United Kingdom or any of the Colonies or Dependencies thereof, or in British India, or incorporated by an Act of Parliament or of the Governor-General in Council, or by Royal Charter or Letters Patent.

(2) "bank" and "banker" mean—

(a) any company carrying on the business of bankers ;

(b) any partnership or individual to whose books the provisions of this Act shall have been extended as hereinafter provided ;

(c)† any Post Office Savings Bank or Money-order Office :

(3) "bankers' books" include ledgers, day-books, cash-books, account-books, and all other books used in the ordinary business of a bank :

* The definition of "company" has been substituted for the original one by the Bankers' Books Evidence Act (XII. of 1900), s. 2.

† To sub-s. (2) of s. 2, cl. (c) has been added by s. 2 of the Bankers' Books Evidence Act (I. of 1893).

(4) "legal proceeding" means any proceeding or inquiry in which evidence is or may be given, and includes an arbitration :

(5) "the Court" means the person or persons before whom a legal proceeding is held or taken :

(6) "Judge" means a Judge of a High Court :

(7) "trial" means any hearing before the Court at which evidence is taken ; and

(8) "certified copy" means a copy of any entry in the books of a bank, together with a certificate written at the foot of such copy that it is a true copy of such entry ; that such entry is contained in one of the ordinary books of the bank, and was made in the usual and ordinary course of business ; and that such book is still in the custody of the bank, such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title.

3. The Local Government may, from time to time, by notification in the official Gazette, extend the provisions of this Act to the books of any partnership or individual carrying on the business of bankers within the territories under its administration, and keeping a set of not less than three ordinary account-books, namely, a cash-book, a day-book or journal, and a ledger, and may, in like manner, rescind any such notification.

4. Subject to the provisions of this Act, a certified copy of any entry in a banker's book shall in all legal proceedings, be received as *prima-facie* evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions, and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise.

5. No officer of a bank shall, in any legal proceeding to which the bank is not a party, be compellable to produce any banker's book the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions, and accounts therein recorded unless by order of the Court or a Judge made for special cause.

6. (1) On the application of any party to a legal proceeding, the Court or a Judge may order that such party be at liberty to inspect and

take copy of any entries in a banker's book for any of the purposes of such proceeding, or may order the bank to prepare and produce, within a time to be specified in the order, certified copies of all such entries, accompanied by a further certificate that no other entries are to be found in the books of the bank relevant to the matters in issue in such proceeding, and such further certificate shall be dated and subscribed in manner hereinbefore directed in reference to certified copies.

(2) An order under this or the preceding section may be made either with or without summoning the bank, and shall be served on the bank three clear days (exclusive of bank holidays) before the same is to be obeyed unless the Court or Judge shall otherwise direct.

(3) The bank may, at any time before the time limited for obedience to any such order as aforesaid, either offer to produce their books at the trial, or give notice of their intention to show cause against such order, and thereupon the same shall not be enforced without further order.

7. (1) The costs of any application to the Court or a Judge under or for the purposes of this Act, Costs. and the costs of anything done or to be done under an order of the Court or a Judge made under or for the purposes of this Act, shall be in the discretion of the Court or Judge, who may further order such costs or any part thereof to be paid to any party by the bank if they have been incurred in consequence of any fault or improper delay on the part of the bank.

(2) Any order made under this section for the payment of costs to or by a bank may be enforced as if the bank were a party to the proceeding.

(3) Any order under this section awarding costs may, on application to any Court of Civil Judicature designated in the order, be executed by such Court as if the order were a decree for money passed by itself:

Provided that nothing in this sub-section shall be construed to derogate from any power which the Court or Judge making the order may possess for the enforcement of its or his directions with respect to the payment of costs.

ACT NO. I. OF 1893:*

The Bankers' Books Evidence Act, 1893.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received His Excellency's Assent on the 20th January 1893.)

An Act to extend the Provisions of the Bankers' Books Evidence Act, 1891,† to the Books of Post Office Savings Banks and Money Order Offices.

WHEREAS it is expedient to extend the provisions of the Bankers' Books Evidence Act, 1891,† to the books of the Savings Banks and Money Order Offices of the Post Office; It is hereby enacted as follows:—

Short title and commencement.

1. (1) This Act may be called "The Bankers' Books Evidence Act, 1893;" and

(2) It shall come into force at once.

Addition to definition of "bank" and "banker" in section 2, sub-section (2), of Act XVIII. of 1891.

2. After clause (b) of sub-section (2) of section 2 of the said Bankers' Books Evidence Act, 1891,† the following clause shall be added, namely:—

[*Vide supra*, p. 77.]

* For Statement of Objects and Reasons, see *Gazette of India*, 1893, Pt. V., p. 15; for Proceedings in Council, see *ibid* Pt. VI., pp. 12 and 27.

Act I. of 1893 has been extended to the Santhal Parganas—See *Gazette of India*, 1895, Pt. I., p. 541.

† Act XVIII. of 1891.—See p. 77, *Supra*

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THE
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BEING
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AS AMENDED UP TO DECEMBER, 1913.

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THE
CRIMINAL PROCEDURE CODE
(ACT V. OF 1898).

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THE
CODE OF CRIMINAL PROCEDURE, 1898,
BEING
ACT NO. V. OF 1898.*

RECEIVED THE G.-G.'S ASSENT ON THE 22ND MARCH 1898.

An Act to consolidate and amend the Law relating to Criminal Procedure.

WHEREAS it is expedient to consolidate and amend the law relating to criminal procedure; It is hereby enacted as follows:—

* For Statement of Objects and Reasons, see *Gazette of India*, 1897, Pt. V., p. 353; for Report of the Select Committee, see *ibid*, 1898, Pt. V., p. 19; and for Proceedings in Council, see *ibid*, 1897, Pt. VI., pp. 238 and 254, and *ibid* 1898, pp. 22, 101, and 175.

Act V of 1898 has been declared, under section 3 of the Santhal Parganas Settlement Regulation (III. of 1872) as amended by the Santhal Parganas Justice and Laws Regulation (III. of 1899), to be in force (with modifications) in the Santhal Parganas.—See *Calcutta Gazette*, 1898, Pt. I., p. 665.

It has been extended, under s. 5 of the Angul District Regulation (I. of 1894), to the District of Angul with effect from the first August 1898.—See *Calcutta Gazette*, 1898, Pt. I., p. 779.

It has been declared in force in Upper Burma except the Shan States, by the Burma Laws Act (XIII. of 1898).

It has been declared in force in the Chittagong Hill Tracts (with a reservation as to cases tried by certain persons) by s. 4 of the Chittagong Hill Tracts Regulation (I. of 1900).

It has ceased to be in force, by notification under s. 2 of the Assam Frontier Tracts Regulation (II. of 1880), in the following places, namely:—

The Garo Hills the Khasi and Jaintia Hills, the Naga Hills, the North Cachar Sub-division of the Cachar District, the Mikir Hill-tracts in the Nowgong District, the Dibrugarh Frontier Tract in the Lakhimpur District and the Lushai Hills.—See *Assam Gazette*, 1898 Pt. II., p. 788.

It has been declared in force, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874) in the Scheduled Districts in Ganjam and Vizagapatam, see *Fort St. George Gazette*, 1898, Pt. I., p. 306, and *Gazette of India*, 1898, Pt. I., p. 869; and by notification under the same section and section 5A in the following other Scheduled Districts, namely:—

The Districts of Hazaribagh; Lohardaga (now the Ranchi District, see *Calcutta Gazette* 1890, Pt. I., p. 44), Manbhum, and Palamau, and in Pargara Dhalbhum and the Kolhan in the Singbhum District.—See *Calcutta Gazette*, 1898, Pt. I., p. 714 and *Gazette of India*, 1899, Pt. I., p. 779; and in the Pargana of Manpur see *Gazette of India*, 1899, Pt. I., p. 419.

PRELIMINARY.

PART I.—PRELIMINARY.

CHAPTER I.

1. (1) This Act may be called the Code of Criminal Procedure, 1898; and it shall come into force on the first day of July, 1898.
- Short title.
Commencement.

(2) It extends to the whole of British India; but, in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in force, or any special jurisdiction or power* conferred, or any special form of procedure prescribed, by any other law† for the time being in force, or shall apply to—

Extent.

(a) the Commissioners of Police in the towns of Calcutta, Madras, and Bombay or the Police in the towns of Calcutta and Bombay;‡

(b) heads of villages in the Presidency of Fort St. George;§
or

(c) village police officers in the Presidency of Bombay:||

It has been extended by notification under sections 5 and 5A of Act XIV. of 1874 to British Baluchistan—*See Gazette of India*, 1898, Pt. II., p. 221.

It was extended to the Shan States, by the Shan States Laws and Criminal Justice Order, 1895, as amended by notification No 29 dated 19th December 1898.

Certain portions of the Code have been declared by notification under s. 3 (2) of the Cochin Hill Tribes Regulation (I of 1895), to be applicable to members of a hill-tribe in a hill-tract; and, under s. 3 (2) of the Chin Hills Regulation (V of 1896) certain portions have been declared to be applicable to Chins in the Chin Hills—*See Burma Gazette*, 1898, Pt. I., p. 322

* For power to exempt the Judicial Commissioner of Lower Burma and the Recorder of Rangoon, or the Special Court in Burma, from the operation of such parts of the Code as relate to the mode of recording judgments, orders, and sentences, and of taking down the evidence of witnesses, *see the Lower Burma Courts Act* (XI. of 1889), s. 92 (2).

As to power of Governor-General in Council to make rules conferring powers of original criminal jurisdiction on Indian Marine Courts, *see the Indian Marine Courts Act* (XIV. of 1887), s. 70 (2)

† *See for example the Indian Articles of War* (Act V of 1869)

‡ As to Calcutta *see the Calcutta Police Act* (Ben. Act IV of 1866); as to Madras *see the Madras City Police Act* (Mad. Act III. of 1888); as to Bombay, *see Act XIII. of 1856, Act XLVIII. of 1860, as amended by Bom. Act IV. of 1882.*

§ *See Mad. Reg. XI. of 1816 and Mad. Reg. IV. of 1821.*

|| *See the Bombay Village Police Act* (Bom. Act VIII. of 1867).

Provided that the Local Government may, if it thinks fit, with the sanction of the Governor-General in Council, by notification in the official Gazette, extend any of the provisions of this code, with any necessary modifications, to such excepted persons.

2. (1) On and from the first day of July 1898, the enactments mentioned in the first schedule shall be repealed to the extent specified in the fourth column thereof but not so as to restore any jurisdiction or form of procedure not then existing or followed, or to render unlawful the continuance of any confinement which was then lawful.

(2) All notifications published, proclamations issued, powers conferred, forms prescribed, local limits defined, sentences passed, and orders, rules, and appointments made under any enactment hereby repealed, or under any enactment repealed by any such enactment, and which are in force immediately before the first day of July 1898, shall be deemed to have been respectively published, issued, conferred, prescribed, defined, passed, and made under the corresponding section of this Code.

(3) The provisions of this Code shall apply to all proceedings instituted after the commencement of this Code, and, so far as may be, to all cases pending in any Criminal Court when this Code comes into force.

3. (1) In every enactment passed before this Code comes into force, in which reference is made to, or to any chapter or section of, the Code of Criminal Procedure, Act XXV. of 1861, or Act X. of 1872, or Act X. of 1882, or to any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code, or to its corresponding chapter or section.

(2) In every enactment passed before this Code comes into force, the expressions, "Officer exercising (or 'having') the powers (or 'the full powers') of a Magistrate," "Subordinate Magistrate, first class," and "Subordinate Magistrate, second class," shall respectively be deemed to mean "Magistrate of the first class," "Magistrate of the second class," and "Magistrate of the third class;" the expression "Magistrate of a division of a district" shall be deemed to mean "Sub-divisional Magistrate;" the expression "Magistrate of the

district" shall be deemed to mean "District Magistrate;" the expression "Magistrate of Police" shall be deemed to mean "Presidency Magistrate," and the expression "Joint Sessions Judge" shall mean "Additional Sessions Judge."

4. (1) In this Code the following words and expressions have the following meanings unless a different intention appears from the subject or context:—

Definitions.

- (a) "Advocate-General" includes also a Government advocate, or, where there is no Advocate General or Government Advocate, such officer as the Local Government may, from time to time, appoint in this behalf:
- (b) "bailable offence" means an offence shown as bailable in the second schedule, or which is made bailable by any other law for the time being in force; and "non-bailable offence" means any other offence:
- (c) "charge" includes any head of charge when the charge contains more heads than one:
- (d) "Chief Justice" includes also the Chief Judge of the Chief Court of the Punjab and the [Chief or Senior Judge of the Chief Court of Lower Burma]:*
- (e) "Clerk of the Crown" includes any officer specially appointed by the Chief Justice to discharge the functions given by this Code to the Clerk of the Crown:
- (f) "cognizable offence" means an offence for, and "cognizable case" means a case in, which a police-officer, within or without the presidency-towns, may, in accordance with the second schedule, or under any law for the time being in force, arrest without warrant:
- (g) "Commissioner of Police" includes a Deputy Commissioner of Police:
- (h) "complaint" means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but it does not include the report of a police-officer:

* These words in square brackets have been substituted for the words "Recorder of Rangoon" by the Lower Burma Courts Act (VI. of 1900).—
See s. 47 and the 1st Schedule of that Act.

(s) "European British subject" means—

(i) any subject of Her Majesty born, naturalized, or domiciled in the United Kingdom of Great Britain and Ireland, or in any of the European, American, or Australian Colonies or Possessions of Her Majesty, or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal;

(ii) any child or grandchild of any such person by legitimate descent:

(j) "High Court"* means, in reference to proceedings against European British subjects or persons jointly charged with European British subjects,† the High Courts of Judicature at Fort William, Madras, and Bombay, the High Court of Judicature for the North-Western Provinces, the Chief Court of the Punjab, and the [Chief Court of Lower Burma]:‡ in other cases "High Court" means, the highest Court of criminal appeal or revision for any local area, or, where no such Court is established under any law for the time being in force, such Officer as the Governor-General in Council may appoint in this behalf:

(k) "inquiry" includes every inquiry other than a trial conducted under this Code by a Magistrate or Court:

(l) "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police-officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf:

(m) "judicial proceeding"§ includes any proceeding in the course of which evidence is or may be legally taken on oath:

* For meaning of "High Court" in (1) Upper Burma, see the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., s. 1; (2) in the Santhal Parganas, see the Santhal Parganas Justice Regulation (V. of 1893), s. 4, as amended by the Santhal Parganas Justice and Laws Regulation (III. of 1899). See also another definition at s. 266, *infra*.

† See Ch. XXIII, *infra*.

‡ The words in square brackets have been substituted by the Lower Burma Courts Act (VI. of 1900), s. 47, Sch. I, for the words "Court of the Recorder of Rangoon."

§ Cf. the Indian Penal Code (Act XLV. of 1860), s. 193, *Explanation 1*.

- (n) "non-cognizable offence" means an offence for, and "non-cognizable case" means a case in, which a police-officer, within or without a presidency-town, may not arrest without warrant :
- (o) "offence" means any act or omission made punishable by any law for the time being in force ;
- it also includes any act in respect of which a complaint may be made under section 20 of the Cattle Trespass Act, 1871 ;*
- (p) "officer in charge of a police-station"† includes, when the officer in charge of the police-station is absent from the station-house, or unable from illness or other cause to perform his duties, the police-officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when the Local Government so directs, any other police-officer so present :
- (q) "place" includes also a house, building, tent, and vessel :
- (r) "pleader," used with reference to any proceeding in any Court, means a pleader authorized under any law‡ for the time being in force to practise in such Court, and includes (1) an advocate, a vakil, and an attorney of a High Court so authorized, and (2) any mukhtar or other person appointed with the permission of the Court to act in such proceeding :
- (s) "police-station" means any post or place declared, generally or specially, by the Local Government to be a police-station, and includes any local area specified by the Local Government in this behalf :
- (t) "Public Prosecutor" means any person appointed under section 492, and includes any person acting under the directions of a Public Prosecutor, and any person conducting a prosecution on behalf of Her Majesty in any High Court in the exercise of its original criminal jurisdiction :

* Act I. of 1871.

† Cf. the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., ss. 6 and 7.

‡ See the Legal Practitioners Act (I. of 1846) ; the Legal Practitioners Act (XX of 1853) ; the Legal Practitioners Act (XVIII. of 1879) ; the Legal Practitioners Act (IX. of 1884).

- (u) "sub-division" means a sub-division of a district :*
- (v) "summons-case" means a case relating to an offence, and not being a warrant-case; and
- (w) "warrant-case" means a case relating to an offence punishable with death, transportation, or imprisonment for a term exceeding six months.

Words referring to acts. (2) Words which refer to acts done extend also to illegal omissions; and

all words and expressions used herein, and defined in the Indian Penal Code,† and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code.†

5. (1) All offences under the Indian Penal Code† shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying, or otherwise dealing with such offences.

See s 8, *infra*.

† Act XLV. of 1860

PART II.—CONSTITUTION AND POWERS OF CRIMINAL COURTS AND OFFICES.

CHAPTER II.—OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES.

*A.—Classes of Criminal Courts.**

6. Besides the High Courts and the Courts constituted under any law other than this Code for the time being in force, there shall be five classes of Criminal Courts in British India, namely :—

I.—Courts of Session :

II.—Presidency Magistrates :

III.—Magistrates of the first class :

IV.—Magistrates of the second class :

V.—Magistrates of the third class.

B.—Territorial Divisions.†

7. (1) Every province (excluding the presidency-towns) shall be a sessions division, or shall consist of sessions divisions: and every sessions division shall, for the purposes of this Code, be a district, or consist of districts.

(2) The Local Government may alter the limits, or, with the previous sanction of the Governor-General in Council, the number, of such divisions and districts.

(3) The sessions divisions and districts existing when this Code comes into force shall be sessions divisions and districts respectively unless and until they are so altered.

* In places where the Punjab Frontier Crimes Regulation is in force, cases may be tried by a Council of Elders.—See the Punjab Frontier Crimes Regulation (IV. of 1887), s. 13 (1), see also s. 15 of the same Regulation for executing sentences passed on the finding of Council of Elders. For bar of second trial before any of these Courts, see same Regulation, s. 17 (3).

† As to Courts of Session in Upper Burma, see the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., s. II.

Presidency-towns to be deemed districts. (4) Every presidency-town shall, for the purposes of this Code, be deemed to be a district.

8. (1) The Local Government may divide any district outside the presidency-towns into sub-divisions, or make any portion of any such district a sub-division, and may alter the limits of any sub-division.

(2) All existing sub-divisions which are now usually put under the charge of a Magistrate shall be deemed to have been made under this Code.

C.—Courts and Offices outside the Presidency-towns.

9. (1) The Local Government shall establish a Court of Session for every sessions division, and appoint a Judge of such Court.

(2) The Local Government may, by general or special order in the official Gazette, direct at what place or places the Court of Session shall hold its sittings; but, until such order be made, the Courts of Session shall hold their sittings as heretofore.

(3) The Local Government may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.

(4) A Sessions Judge of one sessions division may be appointed by the Local Government to be also an Additional Sessions Judge of another division, and in such case he may sit for the disposal of cases at such place or places in either division at the Local Government may direct.

(5) All Courts of Session existing when this Code comes into force shall be deemed to have been established under this Act.

10. (1) In every district outside the presidency-towns, the Local Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate.

(2) The Local Government may appoint any Magistrate of the first class to be an Additional District Magistrate for a period not exceeding six months, and such Additional District Magistrate shall have all or any of the powers of a District Magistrate under this Code as the Local Government may direct.

11. Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer temporarily succeeding to vacancies in office of District Magistrate. succeeds temporarily to the chief executive administration of the district, such officer shall, pending the order of the Local Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

12. (1) The Local Government may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrates of the first, second, or third class in any district outside the presidency-towns; and the Local Government, or the District Magistrate subject to the control of the Local Government, may, from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

(2) Except as otherwise provided by such definition, the jurisdiction and powers of such persons shall extend throughout such district.

13. (1) The Local Government may place any Magistrate of the first or second class in charge of a sub-division, and relieve him of the charge as occasion requires.

(2) Such Magistrates shall be called Sub-divisional Magistrates.

(3) The Local Government may delegate its powers under this section to the District Magistrate.

14. (1) The Local Government may confer upon any person all or any of the powers conferred or conferrable by or under this Code on a Magistrate of the first, second, or third class in respect to particular cases or to a particular class or particular classes of cases, or in regard to cases generally, in any local area outside the presidency-towns.

(2) Such Magistrates shall be called Special Magistrates, and shall be appointed for such term as the Local Government may by general or special order direct.

(3) With the previous sanction of the Governor-General in Council, the Local Government may delegate, with such limitations

as it thinks fit, to any officer under its control, the power conferred by sub-section (1).

(4) No powers shall be conferred under this section on any police-officer below the grade of Assistant District Superintendent, and no powers shall be conferred on a police-officer except so far as may be necessary for preserving the peace, preventing crime, and detecting, apprehending, and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.*

15. (1) The Local Government may district any two or more Benches of Magistrates. Magistrates in any place outside the presidency-towns to sit together as a bench, and may by order invest such Bench with any of the powers conferred or conferrable by or under this Code on a Magistrate of the first, second, or third class, and direct it to exercise such powers in such cases, or such classes, of cases only, and within such local limits, as the Local Government thinks fit.

(2) Except as otherwise provided by any order under this section, every such Bench shall have the powers exercisable by Bench in absence of special direction. powers conferred by this Code on a Magistrate of the highest class to which any one of its members, who is present taking part in the proceedings as a member of the Bench, belongs, and, as far as practicable, shall, for the purposes of this Code, be deemed to be a Magistrate of such class.

16. The Local Government may, or, subject to the control of the Local Government, the District Magistrate may, from time to time, make rules consistent with this Code for the guidance of Magistrates' Benches in any district respecting the following subjects :—

- (a) the classes of cases to be tried ;
- (b) the times and places of sitting ;

* Notwithstanding anything contained in s. 14, any police-officer in Assam, not below the grade of Assistant District Superintendent, may be invested with all or any of the powers conferred or conferrable on a Magistrate of the first second, or third class in respect to non-cognizable cases.—See the Assam Police-officers Regulation (II. of 1888), s. 4.

As to conferment of Magisterial powers on police-officers in Upper Burma, see the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., s. III. ; in the Salween and Arakan Districts, see the Burma Laws Act (XIII. of 1896), s. 9.

- (c) the constitution of the Bench for conducting trials ;
- (d) the mode of settling differences of opinion which may arise between the Magistrates in session.

17. (1) All Magistrates appointed under sections 12, 13, and 14, and all Benches constituted under section 15, shall be subordinate to the District Magistrate, and he may, from time to time, make rules or give special orders consistent with this Code as to the distribution of business among such Magistrates and Benches ; and

(2) every Magistrate (other than a Sub-divisional Magistrate) and every Bench exercising powers in a sub-division shall also be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.

(3) All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction, and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Assistant Sessions Judges.

(4) The Sessions Judge may also, when he himself is unavoidably absent or incapable of acting, make provision for the disposal of any urgent application by an Additional or Assistant Sessions Judge, or, if there be no Additional or Assistant Judge, by the District Magistrate, and such Judge or Magistrate shall have jurisdiction to deal with any such application.

(5) Neither the District Magistrate nor the Magistrates or Benches appointed or constituted under sections 12, 13, 14, and 15 shall be subordinate to the Sessions Judge except to the extent and in the manner hereinafter expressly provided.

D.—Courts of Presidency Magistrates.

18. (1) The Local Government shall, from time to time, appoint a sufficient number of persons (hereinafter called Presidency Magistrates) to be Magistrates for each of the presidency-towns, and shall appoint one of such persons to be Chief Presidency Magistrate for each such town.

(2) The powers of a Presidency Magistrate under this Code shall be exercised by the Chief Presidency Magistrate, or by a salaried Presidency Magistrate, or by any other Presidency Magistrate empowered by the Local Government to sit singly, or by any Bench of Presidency Magistrates.

19. Any two or more of such persons may (subject to the rules made by the Chief Presidency Magistrate under the power hereinafter conferred) sit together as a Bench.

20. Every Presidency Magistrate shall exercise jurisdiction in all places within the presidency-town for which he is appointed, and within the limits of the port of such town and of any navigable river or channel leading thereto, as such limits are defined under the law* for the time being in force for the regulation of ports and port-dues.

21. (1) Every Chief Presidency Magistrate shall exercise within the local limits of his jurisdiction all the powers conferred on him by this Code or which, by any law or rule in force immediately before this Code comes into force, are required to be exercised by any Senior of Chief Presidency Magistrate, and may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Code to regulate—

- (a) the conduct and distribution of business and the practice in the Courts of the Magistrates of the town ;
- (b) the times and places at which Benches of Magistrate shall sit ;
- (c) the constitution of such Benches ;
- (d) the mode of settling differences of opinion which may arise between Magistrates in session ; and
- (e) any other matter which could be dealt with by a District Magistrate under his general powers of control over the Magistrates subordinate to him.

(2) The Local Government may, for the purposes of this Code, declare what Presidency Magistrates are Subordinate to the Chief Presidency Magistrate, and may define the extent of their subordination.

* See the Indian Ports Act (X. of 1889).

E.—Justices of the Peace.

22. The Governor-General in Council, so far as regards the Justices of the Peace for whole or any part of British India outside the Mufassal.

and every Local Government, so far as regards the territories subject to its administration (other than the towns aforesaid),

may, by notification in the official Gazette, appoint such European British subjects as he or it thinks fit to be Justices of the Peace within and for the territories mentioned in such notification.

23. The Local Government, so far as regards the towns of Calcutta, Madras, and Bombay, may, by notification in the official Gazette, appoint to be Justices of the Peace within the limits of the town mentioned in such notification any persons resident within British India, and not being the subjects of any foreign state, whom the Local Government thinks fit.

24. (1) Every person now acting as a Justice of the Peace within and for any part of British India other than the said towns, under any commission issued by a High Court, shall be deemed to have been appointed under section 22 by the Governor-General in Council to act as a Justice of the Peace for the whole of British India other than the said towns.

(2) Every person now acting as a Justice of the Peace within the limits of any of the said towns under any such commission shall be deemed to have been appointed under section 23 by the Local Government.

25.* In virtue of their respective offices, the Governor-General, Governors, Lieutenant-Governors, and Chief Commissioners, the Ordinary Members of the Council of the Governor-General, "and the Judges of the High Courts"† are Justices of the Peace within and for the whole of British India; Sessions Judges and District Magistrates are Justices of the Peace within and for the whole of the territories administered by the Local Government

* Cf. The East India Company Act, 1772 (13 Geo. III., Ch. 63), s. 38.

† The words quoted have been substituted by the Lower Burma Courts Act (VI. of 1900), s. 47, and Sch. I., for the words "the Judges of the High Courts and the Recorder of Rangoon."

under which they are serving; and the Presidency Magistrates are Justices of the Peace within and for the towns of which they are respectively Magistrates.

F.—Suspension and Removal.

26. All Judges of Criminal Courts other than the High Courts established by Royal Charter and all Magistrates may be suspended or removed from office by the Local Government:

Provided that such Judges and Magistrates as now are liable to be suspended or removed from office by the Governor-General in Council only shall not be suspended or removed from office by any other authority.

27. The Governor-General in Council may suspend or remove from office any Justice of the Peace appointed by him, and the Local Government may suspend or remove from office any Justice of the Peace appointed by it.

CHAPTER III.—POWERS OF COURTS.

A.—Description of Offences cognizable by each Court.

23. Subject to the other provisions of this Code,* any offence under the Indian Penal Code† may be tried—

(a) by the High Court, or

(b) by the Court of Session, or

(c) by any other Court by which such offence is shown in the eighth column of the second Schedule to be triable.

Illustration.

A is committed to the Sessions Court on a charge of culpable homicide: He may be convicted of voluntarily causing hurt, an offence triable by a Magistrate.

* *E.g.*, ss. 193 and 194, *infra*

† Act XLV. of 1860.

29. (1) Subject to the provisions of section 447, any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court.

(2) When no Court is so mentioned, it may be tried by the High Court or by any Court constituted under this Code by which such offence is shown in the eighth column of the second Schedule to be triable.

30. In the territories respectively administered by the Lieutenant-Governors of the Punjab and Burma and the Chief Commissioners of Oudh, the Central Provinces, Coorg. and Assam, in Sind, and in those parts of the other Provinces in which there are Deputy Commissioners or Assistant Commissioners, the Local Government may,* notwithstanding anything contained in section 29 invest the District Magistrate or any Magistrate of the first class with power to try as a Magistrate all offences not punishable with death.

B.—Sentences which may be passed by Courts of various Classes.

Sentences which High Courts and Sessions Judges may pass.

31. (1) A High Court may pass any sentence authorized by law.

(2) A Sessions Judge or Additional Sessions Judge may pass any sentence authorized by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.†

(3) An Assistant Sessions Judge may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding seven years, or of imprisonment for a term exceeding seven years.

32. (1) The Courts of Magistrates may pass the following sentences, namely :—

Sentences which Magistrates may pass.

* For notification investing the Assistant Commissioner of Ajmere being a District Magistrate, with powers to try as a Magistrate all offences not punishable with death, see the *Gazette of India* 1889, Pt. II., p. 420.

† See s. 374 *infra*.

- (a) Courts of Presidency Magistrates and of Magistrates of the first class : { Imprisonment for a term not exceeding two years, including such solitary confinement as is authorized by law : *
Fine not exceeding one thousand rupees :
Whipping.†
- (b) Courts of Magistrates of the second class : { Imprisonment for a term not exceeding six months, including such solitary confinement as is authorized by law : *
Fine not exceeding two hundred rupees.‡
- (c) Courts of Magistrates of the third class : { Imprisonment for a term not exceeding one month :
Fine not exceeding fifty rupees.

(2) The Court of any Magistrate may, pass any lawful sentence, combining any of the sentences which it is authorized by law to pass.

(3) [*Repealed by Act IV. of 1909.*]

33. (1) The Court of any Magistrate may award such term of imprisonment in default of payment of fine as is authorized by law in case of such default :
Power of Magistrates to sentence to imprisonment in default of fine.

Provided that—

(a) the term is not in excess of the Magistrate's powers under this Code :

(b) in any case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence, the period of imprisonment awarded in default of payment of the fine shall not exceed one-fourth of the period of imprisonment which such
Proviso as to certain cases.

* See the Indian Penal Code (Act XLV. of 1860), ss. 73 and 74.

† As to powers of Magistrates in Upper Burma to pass sentences of whipping, see the Upper Burma Criminal Justice Regulation (V. of 1892), Sch. s. IV., 1899.

‡ Here the words, "whipping (if specially empowered)," are repealed by the Whipping Act (IV. of 1909), and have, therefore, been omitted.

Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

(2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 32.

34. The Court of a Magistrate specially empowered under section 30 may pass any sentence authorized by law except a sentence of death or of transportation for a term exceeding seven years or imprisonment for a term exceeding seven years.

35. (1) When a person is convicted at one trial of two or more distinct offences, the Court may sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict: such punishments, when consisting of imprisonment or transportation, to commence the one after the expiration of the other in such order as the Court may direct unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Provided as follows:—

(a) In no case shall such person be sentenced to imprisonment for a longer period than fourteen years:

Maximum term of punishment.

(b) If the case is tried by a Magistrate (other than a Magistrate acting under section 34), the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

(3) For the purpose of appeal, aggregate sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

Explanation.—Separable offences which come within the provisions of section 71 of the Indian Penal Code* are not distinct offences within the meaning of this section.

Illustration.

A breaks into a house with intent to commit theft, and steals property therein. A has not committed distinct offences.

C—Ordinary and Additional Powers.

36. All District Magistrates, Sub-divisional Magistrates, and Magistrates of the first, second, and third classes† have the powers hereinafter respectively conferred upon them and specified in the third Schedule. Such powers are called their “ordinary powers.”

37. In addition to his ordinary powers, any Sub-divisional Magistrate or any Magistrate of the first, second, or third class may be invested by the Local Government or the District Magistrate, as the case may be, with any powers specified in the fourth Schedule as powers with which he may be invested by the Local Government or the District Magistrate.

38. The power conferred on the District Magistrate by section 37 shall be exercised subject to the control of the Local Government.

D.—Conferment, Continuance, and Cancellation of Powers.

39. (1) In conferring powers under this Code, the Local Government may, by order, empower persons specially by name or in virtue of their office, or classes of officials generally by their official titles.

(2) Every such order shall take effect from the date on which it is communicated to the person so empowered.

40. Whenever any person holding an office in the service of Government, who has been invested with any powers under this Code throughout any local area, is transferred to an equal or higher office of the

* Act XLV. of 1860.

† As to powers of Magistrates in Upper Burma, see the Upper Burma Criminal Justice Regulation (V. of 1892), Sch. s. V.

same nature, within a like local area under the same Local Government, he shall, unless the Local Government otherwise directs, or has otherwise directed, continue to exercise the same powers in the local area to which he is so transferred.

41. (1) The Local Government may withdraw all or any of the powers conferred under this Code on any person by it, or by any officer subordinate to it.

Powers may be cancelled.

(2) Any powers conferred by the District Magistrate may be withdrawn by the District Magistrate.

PART III.—GENERAL PROVISIONS.

CHAPTER IV.—OF AID AND INFORMATION TO THE MAGISTRATES, THE POLICE, AND PERSONS MAKING ARRESTS.

42. Every person is bound to assist a Magistrate or police-officer reasonably demanding his aid, whether within or without the presidency-towns,—

Public when to assist Magistrates and police.

(a) in the taking or preventing the escape of any other person whom such Magistrate or police-officer is authorized to arrest;

(b) in the prevention or suppression of a breach of the peace, or in the prevention of any injury attempted to be committed to any railway, canal, telegraph, or public property.

43. When a warrant is directed to a person other than a police-officer, any other person may aid in the execution of such warrant if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

Aid to person, other than police-officer, executing warrant.

44. (1) Every person, whether within or without the presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under any of the following sections of the Indian Penal Code* (namely), 121, 121A, 122, 123,

Public to give information of certain offences.

* Act XLV. of 1860.

124, 124A, 125, 126, 130, 143, 144, 145, 147, 148, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459, and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police-officer of such commission or intention.

(2) For the purposes of this section the term "offence" includes any act committed at any place out of British India which would constitute an offence if committed in British India.

45.* (1) Every village-headman, village-accountant, village-watchman, village-police-officer, owner or occupier of land, and the agent of any such owner or occupier, and every officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, shall forthwith communicate to the nearest Magistrate, or to the officer in charge of the nearest police-station, whichever is the nearer, any information which he may obtain respecting—

- (a) the permanent or temporary residence of any notorious receiver or vendor of stolen property in any village of which he is headman, accountant, watchman, or police-officer, or in which he owns or occupies land, or is agent, or collects revenue or rent;
- (b) the resort to any place within, or the passage through, such village of any person whom he knows or reasonably suspects to be a thug, robber, escaped convict, or proclaimed offender;
- (c) the commission of, or intention to commit, in or near such village, any non-bailable offence or any offence punishable under section 143, 144, 145, 147, or 148 of the Indian Penal Code;†
- (d) the occurrence, in or near such village, of any sudden or unnatural death, or of any death under suspicious circumstances;

* For section in force in Upper Burma instead of this section, see s. 4 of the Upper Burma Village Regulation (XIV. of 1887).

As to the section in force in those parts of Lower Burma to which the Lower Burma Village Act (III. of 1889) is extended, see s. 5 of that Act.

† Act XLV. of 1860.

(e) the commission of, or intention to commit, at any place out of British India near such village, any act which, if committed in British India, would be an offence punishable under any of the following sections of the Indian Penal Code,* namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460;

(f) any matter likely to affect the maintenance of order or the prevention of crime or the safety of person or property respecting which the District Magistrate, by general or special order made with the previous sanction of the Local Government, has directed him to communicate information.

(2) In this section—

(i) “village” includes village-lands; and

(ii) the expression “proclaimed offender” includes any person proclaimed as an offender by any Court or authority established or continued by the Governor-General in Council in any part of India in respect of any act which, if committed in British India, would be punishable under any of the following sections of the Indian Penal Code,* namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460.

(3) Subject to rules in this behalf to be made by the Local Government, the District Magistrate may from time to time appoint one or more persons to be village-headmen for the purposes of this section in any village for which there is no such headman appointed under any other law.

Appointment of village-headmen by District Magistrate in certain cases for purposes of this section.

CHAPTER V.—OF ARREST, ESCAPE, AND RETAKING.

A.—Arrest generally.

46. (1) In making an arrest, the police-officer or other person making the same shall actually touch or confine the body of the person to be

arrested unless there be a submission to the custody by word or action.

Arrest how made.

* Act XLV. of 1860.

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police-officer or other person may use all means necessary to effect the arrest.

(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death, or with transportation for life.*

47. If any person acting under a warrant of arrest, or any police-officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, the person residing in, or being in charge of such place shall, on demand of such person acting as aforesaid, or such police-officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

48. If ingress to such place cannot be obtained under section 47, it shall be lawful in any case for a person acting under a warrant, and, in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police-officer, to enter such place and search therein, and, in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if, after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance :

Provided that, if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested), who, according to custom, does not appear in public, such person or police-officer shall before entering such apartment, give notice to such woman that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

49. Any police-officer or other person authorized to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person arrested, and may use such force as may be necessary for the purpose.

* As to addition with which s. 46 is to be read in places in which the Punjab Frontier Crimes Regulation (IV. of 1887) is in force, see s. 37 (2) of that Regulation, and s. 3 of this Act, *supra*.

person who, having lawfully entered for the purpose of making an arrest, is detained therein.

50. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.*
No unnecessary restraint.

51. Whenever a person is arrested by a police-officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail, but the person arrested cannot furnish bail, and

whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail,

the officer making the arrest, or, when the arrest is made by a private person, the police-officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing apparel, found upon him.†

52. Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.
Mode of searching women.

53. The officer or other person making any arrest under this Code may take from the person arrested, any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested.
Power to seize offensive weapons.

B.—Arrest without Warrant.

54. (1) Any police-officer may, without an order from a Magistrate and without a warrant, arrest—
When police may arrest without warrant.

first—any person who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been, so concerned;

* For penalty for unwarrantable personal violence by a police-officer to a person in his custody, see s. 29 of the Police Act (V. of 1861).

† As to disposal of such property, see s. 523, *infra*

- secondly*—any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking ;
- thirdly*—any person who has been proclaimed as an offender, either under this Code, or by order of the Local Government ;
- fourthly*—any person in whose possession anything is found which may reasonably be suspected to be stolen property, or who may reasonably be suspected of having committed an offence with reference to such thing ;
- fifthly*—any person who obstructs a police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody ;
- sixthly*—any person reasonably suspected of being a deserter from Her Majesty's Army or Navy, or of belonging to Her Majesty's Indian Marine Service, and being illegally absent from that service ;
- seventhly*—any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of British India, which, if committed in British India would have been punishable as an offence, and for which he is under any law relating to extradition, or under the Fugitive Offenders Act, 18 1,* or otherwise, liable to be apprehended or detained in custody in British India ; and
- eighthly*†—any released convict committing a breach of any rule made under section 565, sub-section (5).

* Stat. 44 & 45 Vict., c. 69

† For some other cases in which the police may arrest without warrant, see pp. 135 and 136 of Wigley's, " Index of Indian Statutes," Ed. 1897, and the following Acts —

the Indian Emigration Act (XXI. of 1883), s. 82, see now Act XVII. of 1908 ;

the Rangoon Tramways Act (XXII. of 1883), s. 19 ;

the Explosives Act (IV. of 1884), s. 13 ;

the Punjab Municipalities Act (XX. of 1891), ss. 81 to 83 ;

the Burma Gaming Act (XVI. of 1884), s. 7, see now Bur. Act 1. of 1899 ;

the Burma Municipal Act (Burma Act III. of 1898), s. 194 ;

the Upper Burma Forest Regulation (V. of 1898), s. 63.

(2) This section applies also to the police in the town of Calcutta.*

Arrest of vagabonds, habitual robbers, &c.

55.† (1) Any officer in charge of a police-station may, in like manner, arrest or cause to be arrested—

- (a) any person found taking precautions to conceal his presence within the limits of such station, under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence; or
- (b) any person within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself; or
- (c) any person who is by repute an habitual robber, house-breaker, or thief, or an habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion, or, in order to the committing of extortion, habitually puts or attempts to put persons in fear of injury.

(2) This section applies also to the police in the town of Calcutta.*

56. (1) When any officer in charge of a police-station re-

quires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence or other cause for which the arrest is to be made.

(2) This section applies also to the police in the town of Calcutta.*

* In each sub-s (2) of ss. 54-56, the letter "s" in the word "towns" and the words "and Bombay" after the word "Calcutta" have been repealed by Bom. Act IV. of 1902.

† In Upper Burma any police-officer may exercise the powers conferred by this section on a police-officer in charge of a police-station.—See Schedule (s. VI) to the Upper Burma Criminal Justice Regulation (V. of 1892).

57.* (1) When any person, who, in the presence of a police-

Refusal to give name and officer, has committed, or has been accused of committing, a non-cognizable offence, refuses, on demand of such officer, to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

(2) When the true name and residence of such person have been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a Magistrate if so required :

Provided that, if such person is not resident in British India, the bond shall be secured by a surety or sureties resident in British India.

(3) Should the true name and residence of such person not be ascertained within twenty-four hours from the time of arrest, or should he fail to execute the bond, or, if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction.

58. A police-officer may, for the purpose of arresting without

Pursuit of offenders into warrant any person whom he is authorized to arrest under this chapter, pursue such person into any place in British India.

59. (1) Any private person may arrest any person who, in his view, commits a non-bailable and cognizable offence, or who has been proclaimed as an offender ;

Arrest by private persons.

and shall, without unnecessary delay, make over any person

so arrested to a police-officer, or, in the absence of a police-officer, take such person to the nearest police-station.

(2) If there is reason to believe that such person comes under the provisions of section 54, a police-officer shall re-arrest him.

(3) If there is reason to believe that he has committed a non-cognizable offence, and he refuses, on the demand of a police-officer, to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be

* As to power of detention by officer in charge of a police-station in Upper Burma, see Upper Burma Criminal Justice Regulation (V. of 1892.)

dealt with under the provisions of section 57. If there is no sufficient reason to believe that he has committed any offence, he shall be at once released.

60. A police-officer making an arrest without warrant shall, without unnecessary delay, and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police-station.

61.* No police-officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

62. Officers in charge of police-stations shall report to the District Magistrate, or, if he so directs, to the sub-divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such person have been admitted to bail or otherwise.

63. No person who has been arrested by a police-officer shall be discharged except on his own bond, or on bail or under the special order of a Magistrate.

64. When any offence is committed in the presence of a Magistrate within the local limits of his jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail,† commit the offender to custody.

65. Any Magistrate may at any time arrest or direct the arrest, in his presence, within the local limits of his jurisdiction, of any person

* As to power of detention by officer in charge of a police station in Upper Burma, see the Upper Burma Criminal Justice Regulation (V. of 1892).

† See Cn. XXIX., *infra*.

for whose arrest he is competent at the time and in the circumstances to issue a warrant.

66. If a person in lawful custody escapes or is rescued, the Power, on escape, to pursue person from whose custody he escaped and retake. or was rescued may immediately pursue and arrest him in any place in British India.

67. The provisions of sections 47, 48, and 49 shall apply to Provisions of sections 47, arrests under section 66 although the 48, and 49 to apply to arrests person making any such arrest is not under section 66. acting under a warrant, and is not a police-officer having authority to arrest.

CHAPTER VI.—OF PROCESSES TO COMPEL APPEARANCE.

A.—*Summons.*

68. (1) Every summons* issued by a Court under this Code shall be in writing, in duplicate, signed and sealed by the presiding officer of such Court, or by such other officer as the High Court may, from time to time, by rule direct.

(2) Such summons shall be served by a police-officer, or, subject to such rules as the Local Government may prescribe in this behalf, by an officer of the Court issuing it or other public servant.

(3) This section applies also to the police in the towns of Calcutta and Bombay.

69. (1) The summons shall, if practicable, be served personally on the person summoned by delivering or tendering to him one of the duplicates of the summons.

(2) Every person on whom a summons is so served shall if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

(3) Service of a summons on an incorporated company or other body corporate may be effected by serving it on the secretary,

* For forms, see Sch. V., Forms I. and XXXI., *infra*.

local manager, or other principal officer of the corporation, or by registered post-letter addressed to the chief officer of the corporation in British India. In such case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post.

70. Where the person summoned cannot, by the exercise of due diligence, be found the summons may be served by leaving one of the duplicates for him with some adult male member of his family, or, in a presidency-town, with his servant residing with him; and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

71. If service in the manner mentioned in sections 69 and 70 cannot, by the exercise of due diligence, be effected, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the summons shall be deemed to have been duly served.

72. (1) Where the person summoned is in the active service of the Government or of a Railway Company, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in manner provided by section 69, and shall return it to the Court under his signature with the endorsement required by that section.

(2) Such signature shall be evidence of due service.

73. When a Court desires that a summons issued by it shall be served at any place outside the local limits of its jurisdiction, it shall ordinarily send such summons in duplicate to a Magistrate within the local limits of whose jurisdiction the person summoned resides or is, to be there served.

74. (1) When a summons issued by a Court is served outside the local limits of its jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate that such summons has been served, and a duplicate

of the summons purporting to be endorsed (in manner provided by section 69 or section 70, by the person to whom it was delivered or tendered, or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

(2) The affidavit mentioned in this section may be attached to the duplicate of the summons, and returned to the Court.

*B.—Warrant of Arrest.**

75. (1) Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer, or, in the case of a Bench of Magistrates, by any member of such Bench; and shall bear the seal of the Court.

(2) Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

76. (1) Any Court issuing a warrant for the arrest of any person may, in its discretion, direct, by endorsement on the warrant, that, if such person executes a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security, and shall release such person from custody.

(2) The endorsement† shall state—

(a) the number of sureties;

(b) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound; and

(c) the time at which he is to attend before the Court.

(3) Whenever security is taken under this section the officer to whom the warrant is directed shall forward the bond to the Court.

* These provisions apply to warrants issued under s. 10 of the Upper Burma Ruby Regulation (XII. of 1887), sub-s. (2) of that section.

† For forms, see Sch. V., Form II.

77. (1) A warrant of arrest shall ordinarily be directed to one or more police-officers, and, when Warrant to whom directed. issued by a Presidency Magistrate, shall always be so directed ; but any other Court issuing such a warrant may, if its immediate execution is necessary, and no police-officer is immediately available, direct it to any other person or persons : and such person or persons shall execute the same.

(2) When a warrant is directed to more officers or persons than one, it may be executed by all, or Warrant to several persons. by any one or more, or them.

78. (1) A District Magistrate or Sub-divisional Magistrate may direct a warrant to any landholder, farmer, or manager of land within his district or sub-division for the arrest of any escaped convict, proclaimed offender, or person who has been accused of a non-bailable offence, and who has eluded pursuit.

(2) Such landholder, farmer, or manager shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued is in, or enters on, his land or farm, or the land under his charge.

(3) When the person against whom such warrant is issued, is arrested, he shall be made over with the warrant to the nearest police-officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 76.

79. A warrant directed to any police-officer may also be executed by any other police-officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

80. The police-officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

81. The police-officer or other person executing a warrant of arrest shall (subject to the provisions of section 76 as to security), without unnecessary delay, bring the person arrested before the Court before which he is required by law to produce such person.

Where warrant may be executed.

82. A warrant of arrest may be executed at any place in British India.

83. (1) When a warrant is to be executed outside the local limits of the jurisdiction of the Court issuing the same, such Court may, instead of directing such warrant to a police-officer, forward the same by post or otherwise to any Magistrate or District Superintendent of Police, or the Commissioner of Police in a Presidency-town, within the local limits of whose jurisdiction it is to be executed.

(2)* The Magistrate or District Superintendent or Commissioner to whom such warrant is so forwarded shall endorse his name thereon, and, if practicable, cause it to be executed in manner hereinbefore provided within the local limits of his jurisdiction.

84. (1) When a warrant directed to a police-officer is to be executed beyond the local limits of the jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to a Magistrate or to a police-officer not below the rank of an officer in charge of a station, within the local limits of whose jurisdiction the warrant is to be executed.

(2) Such Magistrate or police-officer shall endorse his name thereon, and such endorsement shall be sufficient authority to the police-officer to whom the warrant is directed to execute the same within such limits, and the local police shall, if so required, assist such officer in executing such warrant.

(3) Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police-officer within the local limits of whose jurisdiction the warrant is to be executed will prevent such execution, the police-officer to whom it is directed may execute the same without such endorsement in any place beyond the local limits of the jurisdiction of the Court which issued it.

(4) This section applies also to the police in the towns of Calcutta and Bombay.

* This sub-section, so far as it applies to the Police in the Town of Bombay, has been repealed by Bom. Act IV. of 1902.

85.* When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within twenty miles of the place of arrest or is nearer than the Magistrate or District Superintendent of Police or the Commissioner of Police in a Presidency town within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 76, be taken before such Magistrate or Commissioner or District Superintendent.

86.* (1) Such Magistrate or District Superintendent or Commissioner shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court:

Provided that, if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate, District Superintendent, or Commissioner, or a direction has been endorsed under section 76 on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate, District Superintendent, or Commissioner shall take such bail or security,† as the case may be, and forward the bond to the Court which issued the warrant.

(2) Nothing in this section shall be deemed to prevent a police-officer from taking security under section 76.

C.—Proclamation and Attachment.

87. (1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation‡ requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

* This section, so far as it applies to the Police in the Town of Bombay, has been repealed by Bom. Act IV. of 1902.

† See Sch. V., Form III., *infra*.

‡ See Sch. V., Forms IV. and V., *infra*.

(2) The proclamation shall be published as follows:—

(a) It shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides, or to some conspicuous place of such town or village; and

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

83. (1) The Court issuing a proclamation under section 87 Attachment of property of may at any time order the attachment * person absconding. of any property, moveable or immovable, or both, belonging to the proclaimed person.

(2) Such order shall authorize the attachment of any property belonging to such person within the district in which it is made; and it shall authorize the attachment of any property belonging to such person without such district when endorsed by the District Magistrate or Chief Presidency Magistrate within whose district such property is situate.

(3) If the property ordered to be attached is a debt or other moveable property, the attachment under this section shall be made—

(a) by seizure; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the delivery of such property to the proclaimed person, or to any one on his behalf; or

(d) by all or any two of such methods as the Court thinks fit.

(4) If the property ordered to be attached is immovable, the attachment under this section shall, in the case of land paying revenue to Government, be made through the Collector of the district in which the land is situate, and in all other cases—

* See Sch. V., Form VI., *infra*.

- (e) by taking possession; or
- (f) by the appointment of a receiver; or
- (g) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person, or to any one on his behalf; or
- (h) by all or any two of such methods as the Court thinks fit.

(5) If the property ordered to be attached consists of live-stock or is of a perishable nature, the Court may, if it thinks it expedient, order immediate sale thereof, and, in such case, the proceeds of the sale shall abide the order of the Court.

(6) The powers, duties, and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under Chapter XXXVI. of the Code of Civil Procedure.*

(7) If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government; but it shall not be sold until the expiration of six months from the date of the attachment unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner, in either of which cases the Court may cause it to be sold whenever it thinks fit.

89. If, within two years from the date of the attachment, any

Restoration of attached person whose property is or has been at the disposal of Government under sub-section (7) of section 88 appears voluntarily, or is apprehended and brought before the Court by whose order the property was attached, or the Court to which such Court is subordinate, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the net proceeds of the sale, or if part only thereof has been sold, the net proceeds of the sale, and the residue of the property, shall, after satisfying thereout all costs incurred in consequence of the attachment, be delivered to him.

D.—Other Rules regarding Processes.

90. A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person other than a

Issue of current in lieu of,
or in addition to, summons.

juror or assessor, issue, after recording its reasons in writing, a warrant* for his arrest—

- (a) if, either before the issue of such summons, or after the issue of the same, but before the time fixed for his appearance, the Court sees reason to believe that he has absconded, or will not obey the summons; or
- (b) if at such time he fails to appear, and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith, and no reasonable excuse is offered for such failure.

91. When any person for whose appearance or arrest the Power to take bond for appearance. officer presiding in any Court is empowered to issue a summons or warrant is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court.

92. When any person who is bound by any bond taken under Arrest on breach of bond this Code to appear before a Court does not so appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him.

93. The provisions contained in this chapter relating to a summons and warrant, and their issue, service, and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

CHAPTER VII.—OF PROCESSES TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER MOVEABLE PROPERTY, AND FOR THE DISCOVERY OF PERSONS WRONGFULLY CONFINED.

A.—Summons to produce.

94. (1) Whenever any Court, or, in any place beyond the limits of the towns of Calcutta and Bombay, any officer in charge of a police-station, considers that the production of any document or other

* See Sch. V., Form VII., *infra*.

thing is necessary or desirable for the purposes of any investigation, inquiry, trial, or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872,* sections 123 and 124, or to apply to a letter, post-card, telegram, or other document or any parcel or thing in the custody of the Postal or Telegraph Authorities.

95. (1) If any document, parcel, or thing in such custody is, in the opinion of any District Magistrate, Chief Presidency Magistrate, High Court, or Court of Session, wanted for the purpose of any investigation, inquiry, trial, or other proceeding under this Code such Magistrate or Court may require the Postal or Telegraph Authorities, as the case may be, to deliver such document, parcel, or thing to such person as such Magistrate or Court directs.

(2) If any such document, parcel, or thing is, in the opinion of any other Magistrate, or of any Commissioner of Police or District Superintendent of Police, wanted, for any such purpose, he may require the Postal or Telegraph Department, as the case may be, to cause search to be made for and to detain such document, parcel, or thing pending the orders of any such District Magistrate, Chief Presidency Magistrate, or Court.

B.—Search-warrant.†

96. (1) Where any Court has reason to believe that a person to whom a summons or order under section 94 or a requisition under section

* Act I. of 1872.

† These provisions apply to searches under s. 9 (1) and (2) of the Upper Burma Ruby Regulation (XII. of 1887).—See s. 9 (3) of that Regulation.

For power to invest any forest-officer with power to issue such warrants, see Upper Burma Forest Regulation (V. of 1898), s. 71 (c). See now Bur. Act (IV. of 1902).

95, sub-section (1), has been or might be addressed, will not or would not produce the document or thing as required by such summons or requisition,

or where such document or thing is not known to the Court to be in the possession of any person,

or where the Court considers that the purposes of any inquiry, trial, or other proceeding under this Code will be served by a general search or inspection,

it may issue a search-warrant;* and the person to whom such warrant is directed may search or inspect in accordance therewith and the provisions hereinafter contained.

(2) Nothing herein contained shall authorize any Magistrate other than a District Magistrate or Chief Presidency Magistrate to grant a warrant to search for a document, parcel, or other thing in the custody of the Postal or Telegraph Authorities.

97. The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.

98. (1) If a District Magistrate, Sub-divisional Magistrate, Presidency Magistrate, or Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property,

or for the deposit or sale or manufacture of forged documents, false seals, or counterfeit stamps or coin, or instruments or materials for counterfeiting coin or stamps, or for forging,

or that any forged documents, false seals, or counterfeit stamps or coin, or instruments or materials used for counterfeiting coin or stamps, or for forging, are kept or deposited in any place,

he may by his warrant† authorize any police-officer above the rank of a constable—

(a) to enter, with such assistance as may be required, such place, and

* See Sch. V., Form VIII., *infra*.

† See Sch. V., Form IX., *infra*.

- (b) to search the same in manner specified in the warrant, and
 - (c) to take possession of any property, documents, seals, stamps, or coins therein found, which he reasonably suspects to be stolen, unlawfully obtained, forged, false, or counterfeit, and also of any such instruments and materials as aforesaid, and
 - (d) to convey such property, documents, seals, stamps, coins, instruments, or materials before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety, and
 - (e) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale, or manufacture or keeping of any such property, documents, seals, stamps, coins, instruments, or materials, knowing or having reasonable cause to suspect the said property to have been stolen or otherwise unlawfully obtained, or the said documents, seals, stamps, coins, instruments or materials to have been forged, falsified, or counterfeited, or the said instruments or materials to have been or to be intended to be used for counterfeiting coin or stamps, or for forging.
- (2) The provisions of this section with respect to—
- (a) counterfeit coin,
 - (b) coin suspected to be counterfeit, and
 - (c) instruments or materials for counterfeiting coin,
- shall, so far as they can be made applicable, apply respectively to—
- (a) pieces of metal made in contravention of the Metal Tokens Act, 1889,* or brought into British India in contravention of any notification for the time being in force under section 19 of the Sea Customs Act, 1878,†
 - (b) pieces of metal suspected to have been so made or to have been so brought into British India, or to be intended to be issued in contravention of the former of those Acts and

- (c) instruments or materials for making pieces of metal in contravention of that Act.

99. When, in the execution of a search-warrant at any place beyond the local limits of the jurisdiction of the Court which issued the same, any of the things for which search is made are found, such things, together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Court issuing the warrant, unless such place is nearer to the Magistrate having jurisdiction therein than to such Court, in which case the list and things shall be immediately taken before such Magistrate; and, unless there be good cause to the contrary, such Magistrate shall make an order authorizing them to be taken to such Court.

C.—Discovery of Persons wrongfully confined.

100 If any Presidency Magistrate, Magistrate of the first class, or Sub-divisional Magistrate has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as, in the circumstances of the case, seems proper.

D.—General Provisions relating to Searches.

101. The provisions of sections 43, 75, 77, 79, 82, 83, and 84 shall, so far as may be, apply to all search-warrants issued under section 96, section 98, or section 100.

102. (1) Whenever any place liable to search or inspection under this chapter is closed, any person residing in, or being in charge of, such place shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

(2) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in manner provided by section 48.

(3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made such person may be searched. If such person is a woman, the direction of section 52 shall be observed.

103. (1) Before making a search under this chapter, the Search to be made in pre- officer or other person about to make it
sence of witnesses. shall call upon two or more respectable
inhabitants of the locality in which the place to be searched is
situate to attend and witness the search.

(2) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person, and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

(3) The occupant of the place searched, or some person in Occupant of place search- his behalf, shall, in every instance, be
ed may attend. permitted to attend during the search,
and a copy of the list prepared under this section, signed by the
said witnesses, shall be delivered to such occupant or person at his
request.

(4) When any person is searched under section 102, sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person at his request.

E.—Miscellaneous.

Power to impound docu-
ment, &c., produced.

104. Any Court may, if it thinks fit, impound any document or thing produced before it under this Code.

105. Any Magistrate may direct a search to be made in his
Magistrate may direct presence of any place for the search of
search in his presence. which he is competent to issue a search-
warrant.

PART IV.—PREVENTION OF OFFENCES.

CHAPTER VIII.*—OF SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR.

A.—Security for keeping the Peace on Conviction.

106. (1) Whenever any person accused of rioting, assault, or other offence involving a breach of the peace, or of abetting the same, or of assembling armed men, or taking other unlawful measures with the evident intention of committing the same, or any person accused of committing criminal intimidation, is convicted, of such offence before a High Court, a Court of Session, or the Court of a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate, or a Magistrate of the first class,

and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace,

such Court may, at the time of passing sentence on such person order him to execute a bond† for a sum proportionate to his means with or without sureties, for keeping the peace during such period, not exceeding three years, as it thinks fit to fix.

(2) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(3) An order under this section may also be made by an Appellate Court or by the High Court when exercising its powers of revision.

B.—Security for keeping the Peace in other cases and Security for Good Behaviour.

107. (1) Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or Magistrate of the first class is informed that any person is likely to commit a breach of the peace, or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace, or disturb the public tranquillity

* Ss. 20 to 26 of the Sind Frontier Regulation (III. of 1892) are to be read with, and construed as part of, this chapter.—See s. 27 of that Regulation, and s. 3 of this Code, *supra*.

† See Sch. V., Form X., *infra*.

the Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix.

(2) Proceedings shall not be taken under this section unless either the person informed against, or the place where the breach of the peace or disturbance is apprehended, is within the local limits of such Magistrate's jurisdiction, and no proceedings shall be taken before any Magistrate, other than a Chief Presidency or District Magistrate, unless both the person informed against and the place where the breach of the peace or disturbance is apprehended are within the local limits of the Magistrate's jurisdiction.

(3) When any Magistrate not empowered to proceed under sub-section (1) has reason to believe that any person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, and that such breach of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody, such Magistrate may, after recording his reasons, issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case, together with a copy of his reasons.

(4) A Magistrate before whom a person is sent under this section may in his discretion detain such person in custody until the completion of the inquiry hereinafter prescribed.

108. Whenever a Chief Presidency or District Magistrate, or a Presidency Magistrate, or Magistrate of the first class specially empowered by the Local Government in this behalf has information that there is within the limits of his jurisdiction any person who, within or without such limits, either orally or in writing, disseminates or attempts to disseminate, or in anywise abets the dissemination of,—

(a) any seditious matter, that is to say, any matter the publication of which is punishable under section 124A of the Indian Penal Code,* or

* Act XLV. of 1860.

- (b) any matter the publication of which is punishable under section 153A of the Indian Penal Code,* or
- (c) any matter concerning a Judge which amounts to criminal intimidation or defamation under the Indian Penal Code,*

such Magistrate may (in manner hereinafter provided) require such person to show cause why he should not be ordered to execute a bond † with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix.

No proceedings shall be taken under this section against the editor, proprietor, printer, or publisher of any publication registered under, or printed or published in conformity with the rules laid down in the Press and Registration of Books Act, 1867.‡ except by the order or under the authority of the Governor-General in Council, or the Local Government or some officer empowered by the Governor-General in Council in this behalf.

109. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or Magistrate of the first class receives information—
 Security for good behaviour from vagrants and suspected persons.

- (a) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing any offence, or
- (b) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, † with sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix.

110. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or a Magistrate of the first class specially empowered in this behalf by the Local Government, receives information that any person within the local limits of his jurisdiction—
 Security for good behaviour from habitual offenders.

- (a) is by habit a robber, housebreaker, or thief, or

* Act XLV. of 1860.

† See Sch. V., Form XI., *infra*.

‡ Act XXV. of 1867.

- (b) is by habit a receiver of stolen property knowing the same to have been stolen, or
- (c) habitually protects or harbours thieves or aids in the concealment or disposal of stolen property, or
- (d) habitually commits mischief, extortion, or cheating or counterfeiting coin, currency notes, or stamps, or attempts so to do, or
- (e) habitually commits, or attempts to commit, or abets the commission of, offences involving a breach of the peace, or
- (f) is so desperate and dangerous as to render his being at large without security hazardous to the community.

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond,* with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit to fix.†

111. The provisions of sections 109 and 110 do not apply to Proviso as to European European British subjects in cases where vagrants. they may be dealt with under the European Vagrancy Act, 1874.‡

112. § 1. When a Magistrate acting under section 107, section 108, section 109, or section 110 deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character, and class of sureties (if any) required.

* See Sch. V, Form XI, *infra*.

† In Upper Burma information as to any person who earns his livelihood by carrying on or assisting in carrying on the game of "ti" or any other game or pretended game of a like nature may be dealt with as information of the description mentioned in this section.—See s. 8 of the Burma Gaming Act (XVI. of 1884). See now Bur. Gambling Act (I. of 1899)

‡ Act IX. of 1874.

§ Ss. 112 and 113, 115, and 117 do not apply to an enquiry under s. 41 of the Punjab Frontier Crimes Regulation (IV of 1887).

Ss. 112 to 125 apply to all cases requiring security for good behaviour under the Upper Burma Frontier Crossing and Disturbed Districts Regulation (IX. of 1887).—See s. 5 (2) of that Regulation.

113.*† If the person in respect of whom such order is made is present in Court, it shall be read over to him, or, if he so desires, the substance thereof shall be explained to him.

114.‡ If such person is not present in Court, the Magistrate shall issue a summons‡ requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him before the Court :

Provided that, whenever it appears to such Magistrate, upon the report of a police-officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

115.*† Every summons or warrant issued under section 114 shall be accompanied by a copy of the order made under section 112, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

116.† The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by a pleader.

117.*† (1) When an order under section 112 has been read or explained under section 113 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under section 114, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

* See foot-note (§) on last-preceding page.

† See foot-note (||) on last-preceding page.

‡ See Sch. V., Form XII., *infra*.

(2) Such inquiry shall be made, as nearly as may be practicable, where the order requires security for keeping the peace, in the manner hereinafter prescribed for conducting trials and recording evidence in summons-cases; and, where the order requires security for good behaviour, in the manner hereinafter prescribed for conducting trials and recording evidence in warrant-cases, except that no charge need be framed.

(3) For the purposes of this section the fact that a person is an habitual offender may be proved by evidence of general repute or otherwise.

(4) Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the Magistrate shall think just.

118.* (1) If, upon such inquiry, it is proved that it is necessary, for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly :

Provided,—

first, that no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 112 :

secondly, that the amount of every bond shall be fixed with due regard to the circumstances of the case, and shall not be excessive :

thirdly, that, when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

119.* If, on an inquiry under section 117, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, the Magistrate shall make an entry on the record to that effect, and, if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

* See foot-note (1) on p. 45, *supra*.

C.—Proceedings in all Cases subsequent to Order to furnish Security.

120.* (1) If any person in respect of whom an order requiring security is made under section 106 or section 118, is, at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

(2) In other cases such period shall commence on the date of such order unless the Magistrate, for sufficient reason, fixes a later date.

121.* The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and, in the latter case, the commission or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.

122.* A Magistrate may refuse to accept any surety offered under this chapter on the ground that, for reasons to be recorded by the Magistrate, such surety is an unfit person.

123.* (1) If any person ordered to give security under section 106 or section 118 does not give such security on or before the date on which the period for which such security is to be given, commences, he shall, except in the case next hereinafter mentioned, be committed to prison,† or, if he is already in prison, be detained in prison‡ until such period expires, or until within such period he gives the security§ to the Court or Magistrate who made the order requiring it.

(2) When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Sessions Judge, or, if such Magistrate is

* See foot-note (1) on p. 46, *supra*.

† See Sch. V., Forms XIII. and XIV., *infra*.

‡ As to punishment for escaping or attempting to escape, see s 225 of the Indian Penal Code (Act XLV. of 1860).

§ See Sch. V., Form XV., *infra*.

a Presidency Magistrate, pending the orders of the High Court, and the proceedings shall be laid, as soon as conveniently may be, before such Court.

(3) Such Court, after examining such proceedings and requiring from the Magistrate any further information or evidence which it thinks necessary, may pass such order on the case as it thinks fit:

Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

(4) If the security is tendered to the officer in charge of the jail he shall forthwith refer the matter to the Court or Magistrate who made the order, and shall await the orders of Such Court or Magistrate.

Kind of imprisonment.

(5) Imprisonment for failure to give security for keeping the peace shall be simple.

(6) Imprisonment for failure to give security for good behaviour may be rigorous or simple as the Court or Magistrate in each case directs.

124.* (1) Whenever the District Magistrate or a Chief Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter, whether by the order of such Magistrate or that of his predecessor in office or of some subordinate Magistrate, may be released without hazard to the community or to any other person, he may order such person to be discharged.†

(2) Whenever any person has been imprisoned for failing to give security under this chapter, the Chief Presidency or District Magistrate may (unless the order has been made by some Court superior to his own) make an order reducing the amount of the security or the number of sureties or the time for which security has been required.

(3) Whenever the District Magistrate or a Chief Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter as ordered by the Court of Session or High Court may be released without hazard to the community, such Magistrate shall make an immediate report of the case for the orders of the Court of Session or High Court, as the case may be, and such Court may, if it thinks fit, order such person to be discharged.

* See foot-note (ii) on p. 46, *supra*. † See Sch. V., Form XV, *infra*.

125.* The Chief Presidency or District Magistrate may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace or for good behaviour executed under this chapter by order of any Court in his district not superior to his Court.

126. (1) Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or Magistrate of the first class to cancel any bond executed under this chapter within the local limits of his jurisdiction.

(2) On such application being made, the Magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear or to be brought before him.

(3) When such person appears or is brought before the Magistrate, such Magistrate shall cancel the bond, and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of sections 121, 122, 123, and 124, be deemed to be an order made under section 106 or section 118, as the case may be.

CHAPTER IX.†

UNLAWFUL ASSEMBLIES.

127. (1) Any Magistrate or officer in charge of a police-station may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

(2) This section applies also to the police in the town of Calcutta.‡

* See foot-note (||) on p. 46, *supra*.

† The whole of Chapter IX., so far as it applies to the town of Bombay, has been repealed by Bom. Act IV. of 1902.

‡ In sub-s. (2) of s. 127, the letter "s" in the word "towns" and the words "and Bombay" have been omitted, having been repealed by Bom. Act. IV. of 1902.

128. If, upon being so commanded, any such assembly does

Use of civil force to disperse. not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a police-station, whether within or without the presidency-towns, may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or soldier in Her Majesty's Army or a volunteer enrolled under the Indian Volunteers Act, 1869,* and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly, or that they may be punished according to law.

129. If any such assembly cannot be otherwise dispersed, and

Use of military force. if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present may cause it to be dispersed by military force.

130. (1) When a Magistrate determines to disperse any such

Duty of officer commanding troops required by Magistrate to disperse assembly. assembly by military force, he may require any commissioned or non-commissioned officer in command of any soldiers in Her Majesty's Army, or of any volunteers enrolled under the Indian Volunteers Act, 1869,* to disperse such assembly by military force, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have, them punished according to law.

(2) Every such officer shall obey such requisition in such manner as he thinks fit; but, in so doing, he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.

131. When the public security is manifestly endangered by

Power of commissioned military officers to disperse assembly. any such assembly, and when no Magistrate can be communicated with, any commissioned officer of Her Majesty's Army may disperse such assembly by military force, and may arrest and confine any persons forming part of it in order to disperse such assembly or that they may be punished according to law, but, if while he is acting under this section, it becomes practicable for him

* Act XX. of 1869.

to communicate with a Magistrate, he shall do so, and shall thenceforward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.

132. No prosecution against any person for any act purporting to be done under this chapter shall be instituted in any criminal Court except with the sanction of the Governor-General in Council; and—

(a) no Magistrate or police-officer acting under this chapter in good faith.*

(b) no officer acting under section 131 in good faith.*

(c) no person doing any act in good faith* in compliance with a requisition under section 128 or section 130, and

(d) no inferior officer or soldier, or volunteer, doing any act in obedience to any order which he was bound to obey,

shall be deemed to have thereby committed an offence.

CHAPTER X.

PUBLIC NUISANCES.

133.†† (1) Whenever a District Magistrate, a Sub-divisional Magistrate, or, when empowered by the Local Government in this behalf, a

Conditional order for removal of nuisance.

* For definition of "good faith" see the Indian Penal Code (Act XLV. of 1860), ss. 52 and 76, and s. 3 (20) of the General Clauses Act (X. of 1897).

† Ss. 133 to 144 have been specially extended to the City of Madras—See s. 29 of the City of Madras Municipal Act Amendment Act (Mad. Act VII. of 1884) and s. 3 (1) of this Act, *supra*. And as to the meaning of "District Magistrate" in these sections when applied as so extended, see s. 3 (m) of the City of Madras Municipal Act (Mad. Act I. of 1884) as amended by Acts VII. of 1884 and I. of 1892.

‡ The powers of a District Magistrate under the section may be conferred on municipal boards in the North-Western Provinces and Oudh, and on municipal committees in the Central Provinces and thereupon the provisions of ss. 133 to 142 both inclusive, with a modification in s. 133 shall apply to all proceedings taken in exercise of the powers so conferred.—See s. 57 of the North-Western Provinces and Oudh Municipalities Act (XV. of 1883) see now N. & O Act (I. of 1900) and the Central Provinces Municipal Act (XVIII. of 1889), s. 86, see now C. P. Municipal Act (XVI. of 1903) respectively.

Magistrate of the first class, considers, on receiving a police report or other information, and on taking such evidence (if any) as he thinks fit,

that any unlawful obstruction or nuisance should be removed from any way, river, or channel which is or may be lawfully used by the public, or from any public place, or

that any trade or occupation, or the keeping of any goods or merchandise, by reason of its being injurious to the health or physical comfort of the community, should be suppressed or removed or prohibited, or

that the construction of any building or the disposal of any substance, as likely to occasion conflagration or explosion, should be prevented or stopped, or

that any building is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence its removal, repair, or support is necessary, or

that any tank, well, or excavation adjacent to any such way or public place should be fenced in such a manner as to prevent danger arising to the public,

such Magistrate may make a conditional order* requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing, or controlling such building, substance, tank, well, or excavation, within a time to be fixed in the order,

to remove such obstruction or nuisance ; or

to suppress or remove such trade or occupation ; or

to remove such goods or merchandise ; or

to prevent or stop the construction of such building ; or

to remove, repair, or support it ; or

to alter the disposal of such substance ; or

to fence such tank, well, or excavation, as the case may be ; or

to appear before himself or some other Magistrate of the first or second class, at a time and place to be fixed by the order, and move to have the order set aside or modified in manner hereinafter provided.

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

Explanation.—A “public place” includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary and recreative purposes.

134.* (1) The order shall, if practicable, be served on the person against whom it is made, in manner herein provided for service of a summons.
 Service or notification of order.

(2) If such order cannot be so served, it shall be notified by proclamation published in such manner as the Local Government may by rule direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

135.* The person against whom such order is made shall—
 Person to whom order is addressed to obey or show cause or claim jury.

(a) perform, within the time specified in the order, the act directed thereby; or

(b) appear in accordance with such order, and either show cause against the same, or apply to the Magistrate by whom it was made to appoint a jury to try whether the same is reasonable and proper.

136.* If such person does not perform such act or appear and show cause or apply for the appointment of a jury as required by section 135, he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code,† and the order shall be made absolute.
 Consequence of his failing to do so.

137.* (1) If he appears and shows cause against the order, the Magistrate shall take evidence in the matter as in a summons-case.
 Procedure where he appears to show cause.

(2) If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case.

(3) If the Magistrate is not so satisfied, the order shall be made absolute.

* See the foot-notes (††) on p. 53, *supra*.

† Act XLV. of 1860.

Procedure where he claims jury. **138.*** (1) On receiving an application under section 135 to appoint a jury, the Magistrate shall—

(a) forthwith appoint a jury† consisting of an uneven number of persons not less than five, of whom the foreman and one-half of the remaining members shall be nominated by such Magistrate, and the other members by the applicant;

(b) summon such foreman and members to attend at such place and time as the Magistrate thinks fit, and

(c) fix a time within which they are to return their verdict.

(2) The time so fixed may, for good cause shown, be extended by the Magistrate.

139.* (1) If the jury or a majority of the jurors find that the order of the Magistrate is reasonable and proper as originally made or subject to a modification which the Magistrate accepts, the Magistrate shall make the order absolute subject to such modification (if any).
Procedure where jury finds Magistrate's order to be reasonable.

(2) In other cases, no further proceedings shall be taken under this chapter.

140.* (1) When an order has been made absolute under section 136, section 137, or section 139, the Magistrate shall give notice‡ of the same to the person against whom the order was made, and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Indian Penal Code.§
Procedure on order being made absolute.

(2) If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods, or other property retained by his order, or by the distress and sale of any other moveable property of such person within or without the local limits.
Consequences of disobedience to order.

* See the foot-notes (11) on p. 53. *Supra*.

† See Sch. V., Form XVII., *infra*.

‡ See Sch. V., Form XVIII., *infra*.

§ Act XLV. of 1860.

of such Magistrate's jurisdiction. If such other property is without such limits, the order shall authorize its attachment and sale when endorsed by the Magistrate within the local limits of whose jurisdiction the property to be attached is found.

(3) No suit^a shall lie in respect of anything done in good faith* under this section.

141 † If the applicant, by neglect or otherwise, prevents the

Procedure on failure to appointment of the jury, or if, from any appoint jury or omission to cause, the jury appointed do not return return verdict. their verdict within the time fixed, or

within such further time as the Magistrate may in his discretion allow, the Magistrate may pass such order as he thinks fit, and such order shall be executed in the manner provided by section 140.

142. † (1) If a Magistrate, making an order under section

Injunction pending in- 133, considers that immediate measures inquiry. should be taken to prevent imminent

danger or injury of a serious kind to the public, he may, whether a jury is to be, or has been, appointed or not, issue such an injunction‡ to the person against whom the order was made as is required to obviate or prevent such danger or injury pending the determination of the matter.

(2) In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger, or to prevent such injury.

(3) No suit shall lie in respect of anything done in good faith by a Magistrate under this section.

143. § A District Magistrate or Sub-divisional Magistrate, or

Magistrate may prohibit any other Magistrate empowered by the repetition or continuance of Local Government or the District Magistrate in this behalf, may order|| any person not to repeat or continue a public nuisance as defined in the Indian Penal Code¶ or any special or local law.

* As to definition of "good faith," see the Indian Penal Code (Act XLV of 1860, ss. 52 and 76, and s. 3 (20) of the General Clauses Act (X. of 1897).

† See both the foot-notes (††) on p. 53, *supra*.

‡ See Sch. V., Form XIX., *infra*.

§ See foot-note (†) on p. 53, *supra*.

|| See Sch. V., Form XX., *infra*.

¶ Act XLV, of 1860.

CHAPTER XI.

TEMPORARY ORDERS IN URGENT CASES OF NUISANCE OR APPREHENDED DANGER.

144.* (1) In case where, in the opinion of a District Magistrate, a Chief Presidency Magistrate, a Sub-divisional Magistrate, or of any other Magistrate specially empowered by the Local Government or the Chief Presidency Magistrate or the District Magistrate to act under this section, immediate prevention or speedy remedy is desirable,

such Magistrate may, by a written order† stating the material facts of the case, and served in manner provided by section 134 direct any person to abstain from a certain act, or to take certain order with certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any person lawfully employed, or danger to human life, health, or safety, or a disturbance of the public tranquillity, or a riot or an affray.

(2) An order under this section may, in cases of emergency, or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed *ex parte*.

(3) An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

(4) Any Magistrate may rescind or alter any order made under this section by himself or any Magistrate subordinate to him, or by his predecessor in office.

(5) No order under this section shall remain in force for more than two months from the making thereof unless, in cases of danger to human life, health, or safety, or a likelihood of a riot or an affray, the Local Government, by notification in the official Gazette, otherwise directs.

* See the definition (b) on p. 50, *supra*.

† See S. 134, Form XX, *infra*.

CHAPTER XII.

DISPUTES AS TO IMMOVEABLE PROPERTY.

145. (1) Whenever a District Magistrate, Sub-divisional Magistrate, or Magistrate of the first class is satisfied, from a police-report concerning land, &c., is likely to cause breach of peace, or other information, that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof within the local limits of his jurisdiction, he shall make an order* in writing stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops, or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in manner provided by this Code for the service of a summons upon such persons or persons as the Magistrate may direct and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) The Magistrate shall then, without reference to the merits of the claims of any of such parties to the dispute, inquire as to possession, and shall hear the parties, receive the evidence produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order before mentioned, in such possession of the said subject:

Provided that, if it appears to the Magistrate that any party has, within two months next before the date of such order, been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date.

Provided, also, that, if the Magistrate considers the case one of emergency, he may at any time attach the subject of dispute, pending his decision under this section.

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such

* See Sch. V., Form XXII., *infra*.

dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6) If the Magistrate decides that one of the parties was in possession of the said subject, he shall issue an order* declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction.†

(7) Proceedings under this section shall not abate by reason only of the death of any of the parties thereto.

146. (1) If the Magistrate decides that none of the parties was then in such possession, or is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach it* until a competent Court has determined the rights of the parties thereto, or the person entitled to possession thereof.

(2) When the Magistrate attaches the subject of dispute, he may, if he thinks fit, appoint a receiver thereof who, subject to the control of the Magistrate, shall have all the powers of a receiver appointed under the Code of Civil procedure.‡

147. Whenever any such Magistrate is satisfied as aforesaid that a dispute likely to cause a breach of the peace exists concerning the right of use of any land or water (including any right of way or other easement over the same) within the local limits of his jurisdiction, he may inquire into the matter in manner provided by section 145, and may, if it appears to him that such right exists, make an order§ permitting such thing to be done, or directing that such thing shall not be done, as the case may be, until the person objecting to such thing being done, or claiming that such thing may be done, obtains the decision of a competent Court adjudging him to be entitled to prevent the doing of, or to do, such thing, as the case may be.

* See Sch. V., Form XXIII., *infra*.

† For limitation of suits to recover possession of such property, see the Indian Limitation Act (XV. of 1877), Sch. II., art. 47. See now Act (IX. of 1908).

‡ Now Act V. of 1908.

§ See Sch. V. Form XXIV., *infra*.

Provided that no order shall be passed under this section permitting the doing of anything where the right to do such thing is exercisable at all times of the year unless such right has been exercised within three months next before the institution of the inquiry; or, where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or occasions before such institution.

148. (1) Whenever a local inquiry is necessary for the purposes of this chapter, any District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

(2) The report of the person so deputed may be read as evidence in the case.

(3) When any costs have been incurred by any party to a proceeding under this chapter for witnesses' or pleaders' fees, or both, the Magistrate passing a decision under section 145, section 146, or section 147 may direct by whom such costs shall be paid, whether by such party, or by any other party to the proceeding, and whether in whole or in part or proportion. All costs so directed to be paid may be recovered as if they were fines.

CHAPTER XIII.

PREVENTIVE ACTION OF THE POLICE.

149. Every police-officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence.

150. Every police-officer receiving information of a design to commit any cognizable offence, shall communicate such information to the police-officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

151. A police-officer, knowing of a design to commit any offence, may arrest, without orders from a Magistrate, and without a warrant, the person so designing if it appears to such officer that the commission of the offence cannot be otherwise prevented.

152. A police-officer may, of his own authority, interpose to prevent any injury attempted to be committed in his view to any public property, moveable or immovable, or the removal or injury of any public land-mark or buoy or other mark used for navigation.

153. (1) Any officer in charge of a police-station may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures or instruments for weighing used or kept therein whenever he has reason to believe that there are in such place any weights, measures, or instruments for weighing which are false.

(2) If he finds in such place any weights, measures, or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to a Magistrate having jurisdiction.

PART V.—INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE.

CHAPTER XIV.

154. Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police-station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Local Government may prescribe in this behalf.

155.* (1) When information is given to an officer in charge of a police-station of the commission of a non-cognizable offence, he shall enter in a book to be kept as aforesaid the substance of such information, and refer the informant to the Magistrate.

(2) No police-officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case or commit the same for trial, or of a Presidency Magistrate.

(3) Any police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police-station may exercise in a cognizable case.

156. (1) Any officer in charge of a police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV. relating to the place of inquiry or trial.

(2) No proceeding of a police-officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above mentioned.

157. (1) If, from information received or otherwise, an officer in charge of a police-station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police-report, and shall proceed in person, or shall depute one of his subordinate officers to proceed, to the spot to investigate the facts and circumstances of the case, and to take such measures as may be necessary for the discovery and arrest of the offender :

* This section, so far as it applies to the Police in the Town of Bombay, has been repealed by Bom. Act IV. of 1902.

Provided as follows :—

(a) When any information as to the commission of any such

Where local investigation offence is given against any person by name, and the case is not of a serious nature, the officer in charge of a police-station need not proceed in person, or depute a subordinate officer to make an investigation on the spot :

(b) If it appear to the officer in charge of a police-station

Where police-officer in charge sees no sufficient ground for entering on an investigation, he shall not investigate the case.

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police-station shall state in his said report his reasons for not fully complying with the requirements of that sub-section.

158. (1) Every report sent to a Magistrate under section 157 shall, if the Local Government so directs, be submitted through such superior officer of police as the Local Government, by general or special order, appoints in that behalf.

(2) Such superior officer may give such instructions to the officer in charge of the police-station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.

159. Such Magistrate, on receiving such report, may direct an investigation, or, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into, or otherwise to dispose of, the case in manner provided in this Code.

160. Any police-officer making an investigation under this chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend as so required.

161. (1) Any police-officer making an investigation under this chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer all questions relating to such case put to him by such officer other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

162. (1) No statement made by any person to a police-officer in the course of an investigation under this chapter shall, if taken down in writing, be signed by the person making it, nor shall such writing be used as evidence :

Provided that, when any witness is called for the prosecution whose statement has been taken down in writing as aforesaid, the Court shall on the request of the accused, refer to such writing, and may then, if the Court thinks it expedient in the interests of justice, direct that the accused be furnished with a copy thereof ; and such statement may be used to impeach the credit of such witness in manner provided by the Indian Evidence Act, 1872.*

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of section 32, clause (1), of the Indian Evidence Act, 1872.*

163. (1) No police-officer or person in authority shall offer or make, or cause to be offered or made, any such inducement, threat, or promise as is mentioned in the Indian Evidence Act, 1872,* section 24.

(2) But no police-officer or other person shall prevent, by any caution or otherwise, any person from making, in the course of any investigation under this chapter, any statement which he may be disposed to make of his own free will.

164. (1) Every Magistrate not being a police-officer may record any statement or confession made to him in the course of an investigation under this chapter, or at any time afterwards before the commencement of the inquiry or trial.

* Act I. of 1872.

(2) Such statements shall be recorded in such of the manners hereinafter prescribed for recording evidence as is, in his opinion, best fitted for the circumstances of the case. Such confessions shall be recorded and signed in the manner provided in section 264, and such statements or confessions shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

(3) No Magistrate shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; and, when he records any confession he shall make a memorandum at the foot of such record to the following effect:—

“I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it, and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed) A. B.,
Magistrate.”

Explanation.—It is not necessary that the Magistrate receiving and recording a confession or statement should be a Magistrate having jurisdiction in the case.

165. (1) Whenever an officer in charge of a police-station, or a police-officer making an investigation, Search by police-officer. considers that the production of any document or thing is necessary to the conduct of an investigation into any offence which he is authorized to investigate, and there is reason to believe that a person to whom a summons or order under section 94 has been or might be issued will not or would not produce such document or thing according to the directions of the summons or order, or when such document or thing is not known to be in the possession of any person, such officer may search, or cause search to be made, for the same in any place within the limits of the station of which he is in charge, or to which he is attached.

(2) Such officer shall, if practicable, conduct the search in person.

(3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in

writing, specifying the document or thing for which search is to be made, and the place to be searched; and such subordinate officer may thereupon search for such thing in such place.

(4) The provisions of this Code as to search-warrants* shall, so far as may be, apply to a search made under this section.

166. (1) An officer in charge of a police-station may require

When officer in charge of police-station may require another to issue search-warrant.

an officer in charge of another police-station, whether in the same or a different district, to cause a search to be made in any place in any case in which the former officer might cause such search to be made within the limits of his own station.

(2) Such officer, on being so required, shall proceed according to the provisions of section 165, and shall forward the thing found if any, to the officer at whose request the search was made.

167. (1) Whenever it appears that any investigation under

Procedure when investigation cannot be completed in twenty-four hours.

this chapter cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation or information is well founded, the officer in charge of the police-station shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused, if any, to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit for a term not exceeding fifteen days in the whole. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

(3) A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

(4) If such order is given by a Magistrate other than the District Magistrate or Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate.

* See ss. 96 to 99, *supra*.

168. When any subordinate police-officer has made any investigation under this chapter, he shall report the result of such investigation to the officer in charge of the police-station.

169. If, upon an investigation under this chapter, it appears to the officer in charge of the police-station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond,* with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police-report, and to try the accused, or commit him for trial.

170. (1) If, upon an investigation under this chapter, it appears to the officer in charge of the police-station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police-report, and to try the accused or commit him for trial, or, if the offence is bailable, and the accused is able to give security, shall take security† from him for his appearance before such Magistrate on a day fixed, and for his attendance from day to day before such Magistrate until otherwise directed.

(2) When the officer in charge of a police-station forwards an accused person to a Magistrate, or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary, to execute a bond* to appear before the Magistrate as thereby directed, and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

(3) If the Court of the District Magistrate or Sub-divisional Magistrate is mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference is given to such complainant or persons.

* See Sch. V., Form XXV., *infra*.

† See Sch. V., Form XXVI., *infra*.

(4) The day fixed under this section shall be the day whereon the accused person is to appear if security for his appearance has been taken, or the day on which he may be expected to arrive at the Court of the Magistrate if he is to be forwarded in custody.

(5) The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

Complainants and witnesses not to be required to accompany police-officer.

171. No complainant or witness on his way to the Court of the Magistrate shall be required to accompany a police-officer,

or shall be subjected to unnecessary restraint or inconvenience,

Complainants and witnesses not to be subjected to restraint.

or required to give any security for his appearance other than his own bond :

Provided that, if any complainant or witness refuses to attend or to execute a bond as directed in section 170, the officer in charge of the police-station may forward him in custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed.

172. (1) Every police-officer making an investigation under this chapter shall day by day enter his diary of proceedings in his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

(2) Any Criminal Court may send for the police-diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court ; but, if they are used by the police-officer who made them to refresh his memory, or, if the Court uses them for the purposes of contradicting such police-officer, the provisions of the Indian Evidence Act, 1872,* section 161 or section 145, as the case may be, shall apply.

* Act I. of 1872.

173. (1) Every investigation under this chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in

Report of police-officer. charge of the police-station shall forward to a Magistrate empowered to take cognizance of the offence on a police-report, a report in the form prescribed by the Local Government, setting forth the names of the parties, the nature of the information, and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused person has been forwarded in custody, or has been released on his bond, and, if so, whether with or without sureties.

(2) Where a superior officer of police has been appointed under section 158, the report shall, in any cases in which the Local Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police-station to make further investigation.

(3) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

174.* (1) The officer in charge of a police-station, or some Police to inquire and re- other police-officer specially empowered port on suicide, &c. by the Local Government in that behalf on receiving information that a person—

(a) has committed suicide, or

(b) has been killed by another or by an animal, or by machinery, or by an accident, or

(c) has died under circumstances raising a reasonable suspicion that some other person has committed an offence,

shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the Local Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person

* For form in which ss. 174 to 176 should be read in their application to the area comprised within the local limits of the ordinary original civil jurisdiction of the High Court at Madras, see s. 4 (2) of the Madras Coroners Act (V. of 1889).

is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

(2) The report shall be signed by such police-officer and other persons, or by so many of them, as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

(3) When there is any doubt regarding the cause of death, or when, for any other reason, the police officer considers it expedient so to do, he shall, subject to such rules as the Local Government may prescribe in this behalf forward the body, with a view to its being examined, to the nearest Civil Surgeon or other qualified medical man appointed in this behalf by the Local Government if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) In the Presidencies of Fort St. George and Bombay, investigations under this section may be made by the head of the village, who shall then report the result to the nearest Magistrate authorized to hold inquests.

(5) The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub-divisional Magistrate, and any Magistrate specially empowered in this behalf by the Local Government or the District Magistrate.

175. (1) A police-officer proceeding under section 174 may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Every person so summoned shall be bound to attend, and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

(2) If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the police-officer to attend a Magistrate's Court.

176. (1) When any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and, in any other case mentioned in section 174, clauses (a), (b), and (c) of subsection (1), any Magistrate so empowered may, hold an inquiry into the cause of death, either instead of, or in addition to, the investigation held by the police-officer; and, if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed according to the circumstances of the case.

(2) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, Power to disinter corpses. in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.*

PART VI.—PROCEEDINGS IN PROSECUTIONS.

CHAPTER XV.

OF THE JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS.

A.—Place of Inquiry or Trial.

177. Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

Ordinary place of inquiry and trial.

178. Notwithstanding anything contained in section 177, the Local Government may direct that any cases or class of cases committed for trial in any district may be tried in any sessions division:

Power to order cases to be tried in different sessions divisions.

* A similar power is entrusted to the Coroners of Calcutta and Bombay.—See the Coroners Act (IV. of 1871).

Provided that such direction is not repugnant to any direction previously issued by the High Court under section 15 of the Indian High Courts Act, 1961,* or under this Code, section 526.

179. When a person is accused of the commission of any

Accused triable in district offence by reason of anything which has been done, or where consequence ensues. which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.

Illustrations.

(a.) *A* is wounded within the local limits of the jurisdiction of Court *H* and dies within the local limits of the jurisdiction of Court *Z*. The offence of the culpable homicide of *A* may be inquired into or tried either by *X*, or *Z*.

(b.) *A* is wounded within the local limits of the jurisdiction of Court *X*, and is, during ten days within the local limits of the jurisdiction of Court *Y*, and, during ten days more within the local limits of the jurisdiction of Court *Z*, unable, in the local limits of the jurisdiction of either Court *Y* or Court *Z*, to follow his ordinary pursuits: The offence of causing grievous hurt to *A* may be inquired into or tried by *X*, *Y*, or *Z*.

(c.) *A* is put in fear of injury within the local limits of the jurisdiction of Court *X*, and is thereby induced, within the local limits of the jurisdiction of Court *Y*, to deliver property to the person who put him in fear: The offence of extortion committed on *A* may be inquired into or tried either by *X* or *Y*.

(d.) *A* is wounded in the Native State of Baroda, and dies of his wounds in Poona. The offence of causing *A*'s death may be inquired into and tried in Poona.

180. When an act is an offence by reason of its relation

Place of trial where act is offence by reason of relation to other offence. to any other act which is also an offence, or which would be an offence if the doer were capable of committing an offence, a charge of the first-mentioned offence may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done.

Illustrations.

(a.) A charge of abetment may be inquired into or tried either by the Court within the local limits of whose jurisdiction the abetment was com-

* Stat. 24 & 25 Vict., c. 104.

mitted, or by the Court within the local limits of whose jurisdiction the offence abetted was committed.

(b.) A charge of receiving or retaining stolen goods may be inquired into or tried either by the Court within the local limits of whose jurisdiction the goods were stolen, or by any Court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained.

(c.) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into or tried by the Court within the local limits of whose jurisdiction the wrongful concealing, or by the Court within the local limits of whose jurisdiction the kidnapping took place.

181. (1) The offence of being a thug, of being a thug and

Being a thug, or belonging to a gang of dacoits, escape from custody, &c. committing murder, of dacoity, of dacoity with murder, of having belonged to a gang of dacoits, or of having escaped from custody, may be inquired into or tried by a Court within the local limits of whose jurisdiction the person charged is.

(2) The offence of criminal misappropriation or of criminal

Criminal misappropriation and criminal breach of trust. breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received or retained by the accused person, or the offence was committed.

(3) The offence of stealing anything may be inquired into or

Stealing. tried by a Court within the local limits of whose jurisdiction such thing was stolen or was possessed by the thief, or by any person who received or retained the same knowing or having reason to believe it to be stolen.

(4) The offence of kidnapping or abduction may be inquired

Kidnapping and abduction. into or tried by a Court within the local limits of whose jurisdiction the person kidnapped or abducted was kidnapped or abducted, or was conveyed or concealed or detained.

Place of inquiry or trial where scene of offence is uncertain,

182 When it is uncertain in which of several local areas an offence was committed, or

or not in one district only,

where an offence is committed partly in one local area and partly in another, or

where an offence is a continuing one, and continues to be committed in more local areas than one, or

or consists of several acts. where it consists of several acts done in different local areas,

it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

183. An offence committed whilst the offender is in the course of performing a journey or voyage may be inquired into or tried by a Court through or into the local limits of whose jurisdiction the offender, or the person against whom, or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage.

184. All offences against the provisions of any law for the time being in force relating to Railways,* Telegraphs,† the Post-office,‡ or Arms and Ammunition § may be inquired into or tried in a presidency-town, whether the offence is stated to have been committed within such town or not :

Provided that the offender and all the witnesses necessary for his prosecution are to be found within such town.

185. (1) Whenever any doubt arises as to the Court by which any offence should, under the preceding provisions of this chapter, be inquired into or tried, the High Court, within the local limits of whose appellate criminal jurisdiction the offender actually is, may decide by which Court the offence shall be inquired into or tried. ||

* See the Indian Railways Act (IX of 1890).

† See the Indian Telegraphs Act (XIII. of 1885).

‡ See the Indian Post-office Act (VI of 1898).

§ See the Indian Arms Act (XI. of 1878).

|| Section 185, sub-section (2), has been repealed by the Lower Burma Courts Act (VI. of 1900), Sch. II. The sub-section ran as follows : “ (2) In Lower Burma, when the offender is an European British subject, the Court of the Recorder of Rangoon, and, in all other cases, the Court of the Judicial Commissioner, shall, for the purposes of this section, be deemed to be the High Court.”

186. (1) When a Presidency Magistrate, a District Magistrate,

Power to issue summons or warrant for offence committed beyond local jurisdiction. a Sub-divisional Magistrate, or, if he is specially empowered in this behalf by the Local Government, a Magistrate of the first class, sees reason to believe that any person within the local limits of his jurisdiction has committed without such limits (whether within or without British India) an offence which cannot, under the provisions of sections 177 to 184 (both inclusive) or any other law for the time being in force, be inquired into or tried within such local limits, but is, under some law for the time being in force, triable in British India, such Magistrate may inquire into the offence as if it had been committed within such local limits, and

Magistrate's procedure on arrest. compel such person in manner hereinbefore provided to appear before him, and send such person to the Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is bailable, take a bond, with or without sureties, for his appearance before such Magistrate.

(2) When there are more Magistrates than one having such jurisdiction, and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent or bound to appear, the case shall be reported for the orders of the High Court

187. (1) If the person has been arrested under a warrant

Procedure where warrant issued under section 186 by a Magistrate other than a Presidency Magistrate or District Magistrate, such Magistrate shall send the person arrested to the District or Sub-divisional Magistrate to whom he is subordinate, unless the Magistrate having jurisdiction to inquire into or try such offence issues his warrant for the arrest of such person, in which case the person arrested shall be delivered to the police-officer executing such warrant, or shall be sent to the Magistrate by whom such warrant was issued.

(2) If the offence which the person arrested is alleged or suspected to have committed is one which may be inquired into or tried by any Criminal Court in the same district other than that of the Magistrate acting under section 186, such Magistrate shall send such person to such Court.

Liability of British subjects for offences committed out of British India.

188. When a Native Indian subject of Her Majesty commits an offence at any place without and beyond the limits of British India, or

when any British subject commits an offence in the territories of any Native Prince or Chief in India, or

when a servant of the Queen (whether a British subject or not) commits an offence in the territories of any Native Prince or Chief in India,

he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found :

Provided that no charge as to any such offence shall be inquired into in British India unless the Political Agents to certify the fitness of inquiry into charge. Political Agent, if there is one, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge ought to be inquired into in British India; and, where there is no Political Agent, the sanction of the Local Government shall be required :

Provided, also, that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence had been committed in British India shall be a bar to further proceedings against him under the Foreign Jurisdiction and Extradition Act, 1879,* in respect of the same offence in any territory beyond the limits of British India.

189. Whenever any such offence as is referred to in section 188 is being inquired into or tried, the Power to direct copies of depositions and exhibits to be received in evidence. Local Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before the Political Agent or a judicial officer in or for the territory in which such offence is alleged to have been committed, shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

B.—Conditions requisite for Initiation of Proceedings.

190. (1) Except as hereinafter provided, any Presidency Magistrate, District Magistrate, or Sub-Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence—

* Act XXI, of 1879. See now Act XV. of 1903.

- (a) upon receiving a complaint of facts which constitute such offence ;
- (b) upon a police-report of such facts ;
- (c) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offence has been committed.

(2) The Local Government, or the District Magistrate subject to the general or special orders of the Local Government, may empower any Magistrate to take cognizance under sub-section (1), clause (a) or clause (b), of offences for which he may try or commit for trial.

(3) The Local Government may empower any Magistrate of the first or second class to take cognizance under sub-section (1), clause (c), of offences for which he may try or commit for trial.

191. When a Magistrate takes cognizance of an offence under sub-section (1), clause (c), of the preceding section, the accused shall, before any evidence is taken, be informed that he is entitled to have the case tried by another Court, and, if the accused, or any of the accused if there be more than one, objects to being tried by such Magistrate, the case shall, instead of being tried by such Magistrate, be committed to the Court of Session, or transferred to another Magistrate.

192. (1) Any Chief Presidency Magistrate, District Magistrate, or Sub-divisional Magistrate may transfer any case, of which he has taken cognizance, for inquiry or trial, to any Magistrate subordinate to him.

(2) Any District Magistrate may empower any Magistrate of the first class who has taken cognizance of any case to transfer it for inquiry or trial to any other specified Magistrate in his district who is competent under this Code to try the accused, or commit him for trial ; and such Magistrate may dispose of the case accordingly.

193. (1) Except as otherwise expressly provided by this Code, or by any other law for the time being in force, no Court of Session* shall take Cognizance of offences by Courts of Session.

* As to procedure of Courts of Session in Upper Burma, see the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., s. II. (3) (b). This procedure, however, does not affect the Code in its application to European British subjects in Upper Burma.—See s. XVII. *ibid*.

cognizance of any offence as a Court of original jurisdiction unless the accused has been committed to it by a Magistrate duly empowered in that behalf.

(2) Additional Sessions Judges and Assistant Sessions Judges shall try such cases only as the Local Government, by general or special order, may direct them to try, or, in the case of Assistant Sessions Judges, as the Sessions Judge of the division, by general or special order, may make over to them for trial.

194. (1) The High Court may take cognizance of any offence upon a commitment made to it in manner hereinafter provided.

Nothing herein contained shall be deemed to affect the provisions of any Letters Patent granted under the Indian High Courts Act, 1861,* or any other provision of this Code.

(2) (a) Notwithstanding anything in this Code contained, the Advocate-General may, with the previous sanction of the Governor-General in Council or the Local Government, exhibit to the High Court, against persons subject to the jurisdiction of the High Court, informations for all purposes for which Her Majesty's Attorney-General may exhibit informations on behalf of the Crown in the High Court of Justice in England.

(b) Such proceedings may be taken upon every such information as may lawfully be taken in the case of similar informations filed by Her Majesty's Attorney-General, so far as the circumstances of the case and the practice and procedure of the said High Court will admit.

(c) All fines, penalties, forfeitures, debts, and sums of money recovered or levied under or by virtue of any such information shall belong to the Government of India.

(d) The High Court may make rules for carrying into effect the provisions of this section.

195. (1) No Court shall take cognizance—

(a) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code,† except with the previous sanction, or on the complaint, of the public servant concerned, or of some public servant to whom he is subordinate;

* Stat. 24 & 25 Vict., c. 104.

† Act XLV. of 1860.

(b) of any offence punishable under section 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211, or 228 of the same Code,* when such offence is committed in, or in relation to any proceeding in, any Court, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate ;

(c) of any offence described in section 463, or punishable under section 471, 475, 476, of the same Code,* when such offence has been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate.

(2) In clauses (b) and (c) of sub-section (1), the term "Court" means a Civil, Revenue, or Criminal Court, but does not include a Registrar or Sub-Registrar under the Indian Registration Act 1877.†

(3) The provisions of sub-section (1) with reference to the offences named therein apply also to "Criminal conspiracies to commit such offences and to"‡ the abetment of such offences and attempts to commit them.

(4) The sanction referred to in this section may be expressed in general terms, and need not name the accused person ; but it shall, so far as practicable, specify the Court or other place in which, and the occasion on which, the offence was committed.

(5) When sanction is given in respect of any offence referred to in this section, the Court taking cognizance of the case may frame a charge of any other offence so referred to which is disclosed by the facts.

(6) Any sanction given or refused under this section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate ; and no sanction shall remain in force for more than six months from the date on which it was given, provided that the High Court may, for good cause shown, extend the time.

* The Indian Penal Code (Act XLV. of 1860).

† New Act XVI. of 1908.—See s. 93 and the Schedule thereof.

‡ The words within quotations have been added by Act VIII. of 1913.

(7) For the purposes of this section, every Court shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie, that is to say—

- (a) where such appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;
- (b) where such appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case in connection with which the offence is alleged to have been committed;
- (c) where no appeal lies, such Court shall be deemed to be subordinate to the principal Court of original jurisdiction within the local limits of whose jurisdiction such first-mentioned Court is situate.

196. No Court shall take cognizance of any offence punishable under Chapter VI. of the Indian Penal Code* (except section 127), or punishable under section 108A, or section 153A, or section 294A or section 505 of the same Code, unless upon complaint made by order of, or under authority from, the Governor-General in Council, the Local Government, or some officer empowered by the Governor-General in Council in this behalf.

"196A.† No Court shall take cognizance of the offence of criminal conspiracy punishable under section 120 B of the Indian Penal Code, Prosecution for certain classes of criminal conspiracy.

- (1) in a case where the object of the conspiracy is to commit either an illegal act other than an offence, or a legal act by illegal means, or an offence to which the provisions of section 190 apply, unless upon complaint made by order or under authority from the Governor-General in Council, the Local Government or some officer empowered by the Governor-General in Council in this behalf, or
- (2) in a case where the object of the conspiracy is to commit any non-cognizable offence, or a cognizable offence not punishable with death, transportation or

* Act XLV. of 1860.

† This section was added by Act VIII. of 1913.

rigorous imprisonment for a term of two years or upwards unless the Local Government, or a Chief Presidency Magistrate or a District Magistrate empowered in this behalf by the Local Government has, by order in writing, consented to the initiation of the proceedings:

Provided that where the criminal conspiracy is one to which the provisions of sub-section (3) of section 195 apply no such consent shall be necessary."

197. (1) When any Judge, or any public servant not removable from his office without the sanction of the Government of India or the Local Government, is accused as such Judge or public servant of any offence, no Court shall take cognizance of such offence except with the previous sanction of the Government having power to order his removal, or of some officer empowered in this behalf by such Government, or of some Court or other authority to which such Judge or public servant is subordinate, and whose power to give such sanction has not been limited by such Government.

(2) Such Government may determine the person by whom, the manner in which the offence or offences for which, the prosecution of such Judge or public servant is to be conducted, and may specify the Court before which the trial is to be held.

198. No Court shall take cognizance of an offence falling under Chapter XIX. or Chapter XXI. of the Indian Penal Code,* or under sections 493 to 495 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence.

199. No Court shall take cognizance of an offence under section 497 or section 498 of the Indian Penal Code* except upon a complaint made by the husband of the woman, or, in his absence, by some person who had care of such woman on his behalf at the time when such offence was committed.

CHAPTER XVI.

OF COMPLAINTS TO MAGISTRATES.

200. Subject to the provisions of section 476, a Magistrate taking cognizance of an offence on complaint shall at once examine the complainant upon oath, and the substance of the examination shall be reduced to writing, and shall be signed by the complainant, and also by the Magistrate;

Provided as follows—

- (a) when the complaint is made in writing, nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under section 192;
- (b) where the Magistrate is a Presidency Magistrate, such examination may be on oath or not as the Magistrate in each case thinks fit, and need not be reduced to writing; but the Magistrate may, if he thinks fit, before the matter of the complaint is brought before him, require it to be reduced to writing;
- (c) when the case has been transferred under section 192, and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant.

201. (1) If the complaint has been made in writing to a Magistrate who is not competent to take cognizance of the case, he shall return the complaint for presentation to the proper Court with an endorsement to that effect.

(2) If the complaint has not been made in writing, such Magistrate shall direct the complainant to the proper Court.

202. (1) If the Chief Presidency Magistrate, or any other Presidency Magistrate whom the Local Government may from time to time authorize in this behalf, or any Magistrate of the first or second class, is not satisfied as to the truth of a complaint of an offence of which he is authorized to take cognizance, he may, when the complainant has been examined, record his reasons, and may then postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself, or

direct a previous local investigation to be made by any officer subordinate to such Magistrate, or by a police-officer, or by such other person, not being a Magistrate or police-officer, as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint.

(2) If such investigation is made by some person not being a Magistrate or a police-officer, he shall exercise all the powers conferred by this Code on an officer in charge of a police-station except that he shall not have power to arrest without warrant.

(3) This section applies also to the police in the towns of Calcutta and Bombay.

203. The Magistrate before whom a complaint is made, or to whom it has been transferred, may dismiss the complaint if, after examining the complainant, and considering the result of the investigation (if any) made under section 202, there is, in his judgment, no sufficient ground for proceeding.* In such case he shall briefly record his reasons for so doing.

CHAPTER XVII.

OF THE COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATES.

204. (1) If, in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, and the case appears to be one in which, according to the fourth column of the second Schedule, a summons should issue in the first instance, he shall issue his summons for the attendance of the accused. If the case appears to be one in which, according to that column, a warrant should issue in the first instance, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has not jurisdiction himself) some other Magistrate having jurisdiction.

(2) Nothing in this section shall be deemed to affect the provisions of section 90.

(3) When, by any law for the time being in force, any process-fees or other fees are payable, no process shall be issued until the fees are paid, and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

* See the Indian Penal Code (Act XLV. of 1860), s. 95.

205. (1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused, and permit him to appear by his pleader.

(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinbefore provided.

CHAPTER XVIII.*

OF INQUIRY INTO CASES TRIABLE BY THE COURT OF SESSIONS OR HIGH COURT.

206. (1) Subject to the provisions of section 443, any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or Magistrate of the first class or any Magistrate empowered in this behalf by the Local Government, may commit any person for trial to the Court of Session or High Court for any offence triable by such Court.

(2) But, save as herein otherwise provided, no person triable by the Court of Session shall be committed for trial to the High Court.

207. The following procedure shall be adopted in inquiries before Magistrates where the case is triable exclusively by a Court of Session or High Court, or, in the opinion of the Magistrate, ought to be tried by such Court :—

208. (1) The Magistrate shall, when the accused appears or is brought before him, proceed to hear the complainant (if any), and take in manner hereinafter provided all such evidence as may be produced in support of the prosecution or in behalf of the accused, or as may be called for by the Magistrate.

(2) The accused shall be at liberty to cross-examine the witnesses for the prosecution, and, in such case, the prosecutor may re-examine them.

(3) If the complainant or officer conducting the prosecution or the accused applies to the Magistrate to issue process to compel the attendance of any further evidence.

* Magistrates exercising jurisdiction in the Town of Rangoon, when committing prisoners for trial, commit them to the Chief Court.—See s. 13 of the Lower Burma Courts Act (VI. of 1900).

witness or the production of any document or thing, the Magistrate shall issue such process unless, for reasons to be recorded, he deems it unnecessary to do so.

(4) Nothing in this section shall be deemed to require a Presidency Magistrate to record his reasons.

209. (1) When the evidence referred to in section 208, sub-sections (1) and (3), has been taken, and he has (if necessary) examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him, such Magistrate shall, if he finds that there are not sufficient grounds for committing the accused person for trial, record his reasons and discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

210. (1) When, upon such evidence being taken and such examination (if any) being made, the Magistrate is satisfied that there are sufficient grounds for committing the accused for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged.

(2) As soon as the charge has been framed, it shall be read and explained to the accused, and a copy thereof shall, if he so requires, be given to him free of cost.

211. (1) The accused shall be required at once to give in, orally or in writing, a list of the persons (if any) whom he wishes to be summoned to give evidence on his trial.

(2) The Magistrate may, in his discretion, allow the accused to give in any further list of witnesses at a subsequent time; and, where the accused is committed for trial before the High Court, nothing in this section shall be deemed to preclude the accused from giving, at any time before his trial, to the Clerk of the Crown a further list of the persons whom he wishes to be summoned to give evidence on such trial.

212. The Magistrate may, in his discretion, summon and examine any witness named in any list given in to him under section 211.

213. (1) When the accused, on being required to give in a list under section 211, has declined to do so, or when he has given in such list, and the witnesses (if any) included therein whom the Magistrate desires to examine have been summoned and examined under section 212, the Magistrate may make an order committing the accused for trial by the High Court or the Court of Session (as the case may be), and (unless the Magistrate is a Presidency Magistrate) shall also record briefly the reasons for such commitment.

(2) If the Magistrate, after hearing the witnesses for the defence is satisfied that there are not sufficient grounds for committing the accused, he may cancel the charge, and discharge the accused.

214. If any person (not being an European British subject) is accused before a Magistrate other than a Presidency Magistrate of having committed an offence conjointly with an European British subject, who is about to be committed for trial, or to be tried before the High Court, on a similar charge arising out of the same transaction, and the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall commit him for trial before the High Court, and not before the Court of Session.

215. A commitment once made under section 213 or section 214 by a competent Magistrate or by a Court of Session under section 477, or by a Civil or Revenue Court under section 478, can be quashed by the High Court only, and only on a point of law.

216. When the accused has given in any list of witnesses under section 211, and has been committed for trial, the Magistrate shall summon such of the witnesses included in the list as have not appeared before himself to appear before the Court to which the accused has been committed :

Provided that, where the accused has been committed to the High Court, the Magistrate may, in his discretion, leave such witnesses to be summoned by the Clerk of the Crown, and such witnesses may be summoned accordingly :

Provided, also, that, if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, the Magistrate may refuse to summon unnecessary witness unless deposit made.

quire the accused to satisfy him that there are reasonable grounds for believing that the evidence of such witness is material, and, if he is not so satisfied, may refuse to summon the witness (recording his reasons for such refusal), or may, before summoning him, require such sum to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness and all other proper expenses.

217. (1) Complainants and witnesses for the prosecution and defence, whose attendance before the Court of Session or High Court is necessary, and who appear before the Magistrate, shall execute before him bonds binding themselves to be in attendance when called upon at the Court of Session or High Court to prosecute or to give evidence, as the case may be.

(2) If any complainant or witness refuses to attend before the Court of Session or High Court, or execute the bond above directed, the Magistrate may detain him in custody until he executes such bond, or until his attendance at the Court of Session or High Court is required, when the Magistrate shall send him in custody to the Court of Session or High Court, as the case may be.

218. (1) When the accused is committed for trial, the Magistrate shall issue an order* to such person as may be appointed by the Local Government in this behalf, notifying the commitment, and stating the offence in the same form as the charge, unless the Magistrate is satisfied that such person is already aware of the commitment and the form of the charge;

and shall send the charge, the record of the inquiry, and any weapon or other thing which is to be produced in evidence, to the Court of Session or (where the commitment is made to the High Court) to the Clerk of the Crown, or other officer appointed in this behalf by the High Court.

(2) When the commitment is made to the High Court, and any part of the record is not in English, an English translation of such part shall be forwarded with the record.

* See Sch. V., Form XXVII., *infra*.

219. (1) The Magistrate may, if he thinks fit, summon and examine supplementary witnesses after the commitment and before the commencement of the trial, and bind them over in manner hereinbefore provided to appear and give evidence.

(2) Such examination shall, if possible, be taken in the presence of the accused, and, where the Magistrate is not a Presidency Magistrate, a copy of the evidence of such witnesses shall, if the accused so require, be given to him free of cost.

220. Until and during the trial, the Magistrate shall subject to the provisions of this Code regarding the taking of bail,* commit the accused, by warrant, to custody.

Custody of accused pending trial.

CHAPTER XIX.

OF THE CHARGE.

Form of Charges.†

221. (1) Every charge under this Code shall state the offence with which the accused is charged.

Charge to state offence.

(2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

Specific name of offence sufficient description.

(3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

How stated where offence has no specific name.

(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

What implied in charge.

(6) In the presidency towns the charge shall be written in English; elsewhere it shall be written either in English, or in the language of the Court.

Language of charge.

* See Ch. XXXIX., *infra*.

† See Sch. V., Form XXVIII., *infra*.

(7) If the accused has been previously convicted of any offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court is competent to award,* the fact, date, and place of the previous conviction shall be stated in the charge. If such statement is omitted, the Court may add it at any time before sentence is passed.

Illustrations.

(a.) *A* is charged with the murder of *B*: This is equivalent to a statement that *A*'s act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code;† that it did not fall within any of the General Exceptions of the same Code; and that it did not fall within any of the five Exceptions to section 300; or that, if it did fall within Exception I., one or other of the three provisos to that Exception applied to it.

(b.) *A* is charged, under section 326 of the Indian Penal Code,† with voluntarily causing grievous hurt to *B* by means of an instrument for shooting: This is equivalent to a statement that the case was not provided for by section 355 of the Indian Penal Code,† and that the General Exceptions did not apply to it.

(c.) *A* is accused of murder, cheating, theft, extortion, adultery, or criminal intimidation, or using a false property-mark: The charge may state that *A* committed murder, or cheating, or theft, or extortion, or adultery, or criminal intimidation, or that he used a false property-mark, without reference to the definitions of those crimes contained in the Indian Penal Code;† but the sections under which the offence is punishable must, in each instance, be referred to in the charge.

(d.) *A* is charged, under section 184 of the Indian Penal Code,† with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant: The charge should be in those words.

222. (1) The charge shall contain such particulars as to the Particulars as to time, time and place of the alleged offence, place, and person. and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have

* See the Indian Penal Code (Act XLV. of 1860), s. 75; see the Whipping Act (VI. of 1864), ss. 3 and 4. See now Act IV. of 1909. See also, *infra*, ss. 310, 748, and 511.

† Act XLV. of 1860.

been committed, without specifying particular items or exact dates ; and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 234 :

Provided that the time included between the first and last of such dates shall not exceed one year.

223. When the nature of the case is such that the particulars

When manner of committing offence must be stated. mentioned in sections 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

Illustrations.

(a) *A* is accused of the theft of a certain article at a certain time and place : The charge need not set out the manner in which the theft was effected.

(b) *A* is accused of cheating *B* at a given time and place : The charge must set out the manner in which *A* cheated *B*.

(c) *A* is accused of giving false evidence at a given time and place . The charge must set out that portion of the evidence given by *A* which is alleged to be false.

(d.) *A* is accused of obstructing *B*, a public servant, in the discharge of his public functions at a given time and place : The charge must set out the manner in which *A* obstructed *B* in the discharge of his functions.

(e) *A* is accused of the murder of *B* at a given time and place : The charge need not state the manner in which *A* murdered *B*.

(f) *A* is accused of disobeying a direction of the law with intent to save *B* from punishment : The charge must set out the disobedience charged and the law infringed.

224. In every charge words used in describing an offence

Words in charge taken in sense of law under which offence is punishable. shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

225. No error in stating either the offence or the particulars

Effect of errors. required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

Illustrations.

(a.) *A* is charged, under section 242 of the Indian Penal Code,* with "having" been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit," the word "fraudulently" being omitted in the charge: Unless it appears that *A* was in fact misled by this omission, the error shall not be regarded as material.

(b.) *A* is charged with cheating *B*, and the manner in which he cheated *B* is not set out in the charge, or is set out incorrectly. *A* defends himself, calls witnesses, and gives his own account of the transaction: The Court may infer from this that the omission to set out the manner of the cheating is not material.

(c.) *A* is charged with cheating *B*, and the manner in which he cheated *B* is not set out in the charge. There were many transactions between *A* and *B*, and *A* had no means of knowing to which of them the charge referred, and offered no defence: The Court may infer from such facts that the omission to set out the manner of the cheating was, in this case, a material error.

(d.) *A* is charged with the murder of Khoda Baksh on the 21st January 1882. In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January 1882. *A* was never charged with any murder but one and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that *A* was not misled, and that the error in the charge was immaterial.

(e.) *A* was charged with murdering Haidar Baksh on the 20th January 1882, and Khoda Baksh (who tried to arrest him for that murder) on the 21st January 1882. When charged for the murder of Haidar Baksh, he was tried for the murder of Khoda Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh: The Court may infer from this that *A* was misled, and that the error was material.

226. When any person is committed for trial without a charge, or with an imperfect or erroneous charge, the Court, or, in the case of a High Court, the clerk of the Crown, may frame a charge, or add to or otherwise alter the charge, as the case may be, having regard to the rules contained in this Code as to the form of charges.

Illustrations.

(1.) *A* is charged with the murder of *C*: A charge of abetting the murder of *C* may be added or substituted.

(2.) *A* is charged with forging a valuable security under section 467 of the Indian Penal Code: * A charge of fabricating false evidence under section 193 may be added.

(3.) A is charged with receiving stolen property knowing it to be stolen. During the trial it incidentally appears that he has in his possession instruments for the purpose of counterfeiting coin: A charge under section 235 of the Indian Penal Code* cannot be added.

227. (1) Any Court may alter or add to any charge at any time before judgment is pronounced, or, in the case of trials before the Court of Session or High Court, before the verdict of the jury is returned, or the opinions of the assessors are expressed.

(2) Every such alteration or addition shall be read and explained to the accused.

228. If the charge framed, or alteration or addition made under section 226 or section 227, is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such charge or alteration or addition has been framed or made, proceed with the trial as if the new or altered charge had been the original charge.

229. If the new or altered or added charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial, or adjourn the trial for such period as may be necessary.

230. If the offence stated in the new or altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with, until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the new or altered charge is founded.

231. Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, and also to call any further witness whom the Court may think to be material.

* Act XLV. of 1860.

232. (1) If any appellate Court, or the High Court in the exercise of its powers of revision, or of its powers under Chapter XXVII., is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge, or by an error in the charge, it shall direct a new trial to be had upon a charge framed in whatever manner it thinks fit.

(2) If the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

Illustration.

A is convicted of an offence, under section 196 of the Indian Penal Code,* upon a charge which omits to state that he knew the evidence which he corruptly used or attempted to use as true or genuine, was false or fabricated. If the Court thinks it probable that A had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge, but, if it appears probable from the proceedings that A had no such knowledge, it shall quash the conviction.

Joinder of Charges.

233. For every distinct offence of which any person is accused, there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in sections 234, 235, 236, and 239.

Illustration.

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion: A must be separately charged and separately tried for the theft and causing grievous hurt.

234. (1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, he may be charged with, and tried at one trial for, any number of them not exceeding three.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code,* or of any special or local law.

235. (1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

(2) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

(3) If several acts, of which one or more than one would, by itself or themselves, constitute an offence, constitute, when combined, a different offence, the person accused of them may be charged with and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one or more of such acts.

(4) Nothing contained in this section shall affect the Indian Penal Code,* section 71.

Illustrations—

to sub-section (1) :

(a) *A* rescues *B*, a person in lawful custody, and in so doing, causes grievous hurt to *C*, a constable in whose custody *B* was: *A* may be charged with, and convicted of, offences under sections 225 and 333 of the Indian Penal Code.*

(b) *A* commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with *B*'s wife. *A* may be separately charged with, and convicted of, offences under sections 454 and 497 of the Indian Penal Code.*

(c) *A* entices *B*, the wife of *C*, away from *C*, with intent to commit adultery with *B*, and then commits adultery with her. *A* may be separately charged with, and convicted of, offences under sections 49* and 497 of the Indian Penal Code.*

(d) *A* has in his possession several seals, knowing them to be counterfeit, and intending to use them for the purpose of committing several forgeries punishable under section 466 of the Indian Penal Code: * *A* may be separately charged with, and convicted of, the possession of each seal under section 473 of the Indian Penal Code.*

(e) With intent to cause injury to *B*, *A* institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding; and also falsely accuses *B* of having committed an offence,

* Act XLV. of 1860.

knowing that there is no just or lawful ground for such charges : *A* may be separately charged with, and convicted of, two offences under section 211 of the Indian Penal Code.*

(*f*) *A*, with intent to cause injury to *B*, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, *A* gives false evidence against *B*, intending thereby to cause *B* to be convicted of a capital offence : *A* may be separately charged with, and convicted of, offences under sections 211 and 194 of the Indian Penal Code.*

(*g*) *A*, with six others, commits the offences of rioting, grievous hurt, and assaulting a public servant endeavouring, in the discharge of his duty as such, to suppress the riot : *A* may be separately charged with, and convicted of, offences under sections 147, 325, and 152 of the Indian Penal Code.*

(*h*) *A* threatens *B*, *C*, and *D* at the same time with injury to their persons with intent to cause alarm to them : *A* may be separately charged with, and convicted of, each of the three offences under section 506 of the Indian Penal Code.*

The separate charges referred to in *Illustrations* (*a*) to (*h*) respectively may be tried at the same time,

to sub-section (2) :

(*i*) *A* wrongfully strikes *B* with a cane. *A* may be separately charged with and convicted of, offences under sections 352 and 323 of the Indian Penal Code.*

(*j*) Several stolen sacks of corn are made over to *A* and *B*, who know they are stolen property, for the purpose of concealing them. *A* and *B* thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain-pit : *A* and *B* may be separately charged with, and convicted of, offences under sections 411 and 414 of the Indian Penal Code.*

(*k*) *A* exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. *A* may be separately charged with, and convicted of, offences under sections 317 and 304 of the Indian Penal Code.*

(*l*) *A* dishonestly uses a forged document as genuine evidence in order to convict *B* a public servant, of an offence under section 167 of the Indian Penal Code : * *A* may be separately charged with, and convicted of, offences under sections 471 (read with 466) and 196 of the same Code *

to sub-section (3) :

(*m*) *A* commits robbery on *B*, and, in doing so, voluntarily causes hurt to him : *A* may be separately charged with, and convicted of, offences under sections 323, 392, and 394 of the Indian Penal Code.*

236. If a single act or series of acts is of such a nature

Where it is doubtful what offence has been committed. that it is doubtful which of several offences the facts which can be proved will

constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

Illustrations.

(a.) *A* is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating: He may be charged with theft, receiving stolen property, criminal breach of trust, and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust, or cheating.

(b.) *A* states on oath before the Magistrate that he saw *B* hit *C* with a club. Before the Sessions Court *A* states on oath that *B* never hit *C*. *A* may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false.

237. (1) If, in the case mentioned in section 236, the accus-

When a person is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed although he was not charged with it.

(2) When the accused is charged with an offence, he may be convicted of having attempted to commit that offence, although the attempt is not separately charged.

Illustration.

A is charged with theft. It appears that he committed the offence of criminal breach of trust or that of receiving stolen goods: He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be) though he was not charged with such offence.

238. (1) When a person is charged with an offence consisting

of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence though he was not charged with it.

(2) When a person is charged with an offence, and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence although he is not charged with it.

(3) Nothing in this section shall be deemed to authorize a conviction of any offence referred to in section 198 or section 199 when no complaint has been made as required by that section.

Illustrations.

(a.) *A* is charged, under section 407 of the Indian Penal Code,* with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under section 406 in respect of the property, but that it was not entrusted to him as a carrier: He may be convicted of criminal breach of trust under section 406.

(b.) *A* is charged, under section 325 of the Indian Penal Code,* with causing grievous hurt. He proves that he acted on grave and sudden provocation: He may be convicted under section 335 of that Code.*

239. When more persons than one are accused of the same offence, or of different offences committed in the same transaction, or when one person is accused of committing any offence, and another of abetting of, or attempt to commit, such offence, they may be charged and tried together or separately, as the Court thinks fit; and the provisions contained in the former part of this chapter shall apply to all such charges.

Illustrations.

(a.) *A* and *B* are accused of the same murder: *A* and *B* may be charged and tried together for the murder.

(b.) *A* and *B* are accused of a robbery, in the course of which *A* commits a murder with which *B* has nothing to do: *A* and *B* may be tried together on a charge, charging both of them with the robbery, and *A* alone with the murder.

(c.) *A* and *B* are both charged with a theft, and *B* is charged with two other thefts committed by him in the course of the same transaction: *A* and *B* may be both tried together on a charge charging both with the one theft, and *B* alone with the two other thefts.

240. When a charge containing more heads than one is framed against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw the remaining charge or charges, or the Court, of its own accord, may stay the inquiry into, or trial of, such charge or charges. Such withdrawal shall have the effect of an acquittal on

such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into, or trial of, the charge or charges so withdrawn.

CHAPTER XX.

OF THE TRIAL OF SUMMONS-CASES BY MAGISTRATES.

Procedure in Summons-cases.

241. The following procedure shall be observed by Magistrates in the trial of summons-cases :—

242. When the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted ; but it shall not be necessary to frame a formal charge.*

243. If the accused admits that he has committed the offence of which he is accused, his admission shall be recorded as nearly as possible in the words used by him ; and, if he shows no sufficient cause why he should not be convicted, the Magistrate shall convict him accordingly.

244. (1) If the accused does not make such admission, the Magistrate shall proceed to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution, and also to hear the accused, and take all such evidence as he produces in his defence.

(2) The Magistrate may, if he thinks fit, on the application of the complainant or accused, issue process to compel the attendance of any witness or the production of any document or other thing.

(3) The Magistrate may, before summoning any witness on such application, require that his reasonable expenses, incurred in attending for the purposes of the trial, be deposited in Court.

* Except in the case of trials of European British subjects by District Magistrates, see s. 451 (4), *infra*.

245. (1) If the Magistrate, upon taking the evidence referred**Acquittal.**

to in section 244 and such further evidence (if any) as he may, of his own motion, cause to be produced, and (if he thinks fit), examining the accused, finds the accused not guilty, he shall record an order of acquittal.

Sentence.

(2) If he finds the accused guilty, he shall pass sentence upon him according to law.*

246. A Magistrate may, under section 243 or section 245,

Finding not limited by complaint or summons.

convict the accused of any offence triable under this chapter which, from the facts admitted or proved, he appears to have committed, whatever may be the nature of the complaint or summons.

247. If the summons has been issued on complaint, and upon

Non-appearance of complainant.

the day appointed for the appearance of the accused, or any day subsequent thereto, to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day :

Provided that, where the complainant is a public servant, and his personal attendance is not required, the Magistrate may dispense with his attendance, and proceed with the case.

248. If a complainant, at any time before a final order is

Withdrawal of complaint.

passed in any case under this chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused.

249. In any case instituted otherwise than upon complaint, a

Power to stop proceedings when no complainant.

Presidency Magistrate, a Magistrate of the first class, or, with the previous sanction of the District Magistrate, any other Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment, either of acquittal or conviction, and may thereupon release the accused.

* See Sch. V., Form XXIX., *infra*.

Frivolous Accusations in Summons and Warrant Cases.

250. (1) If, in any case instituted by complaint as defined in this Code, or upon information given to a police-officer or to a Magistrate, a person is accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits the accused, and is satisfied that the accusation against him was frivolous or vexatious, the Magistrate may, in his discretion, by his order of discharge or acquittal, direct the person upon whose complaint or information the accusation was made, to pay to the accused, or to each of the accused where there are more than one, such compensation, not exceeding fifty rupees, as the Magistrate thinks fit:

Provided that, before making any such direction, the Magistrate shall—

- (a) record and consider any objection which the complainant or informant may urge against the making of the direction, and,
- (b) if the Magistrate directs any compensation to be paid, state in writing, in his order of discharge or acquittal, his reasons for awarding the compensation.

(2) Compensation of which a Magistrate has ordered payment under sub-section (1) shall be recoverable as if it were a fine:

Provided that, if it cannot be recovered, the imprisonment* to be awarded shall be simple, and for such term, not exceeding thirty days, as the Magistrate directs.

(3) A complainant or informant, who has been ordered, under sub-section (1), by a Magistrate of the second or third class, to pay compensation to an accused person, may appeal from the order, in so far as the order relates to the payment of the compensation, as if such complainant or informant had been convicted on a trial held by such Magistrate.

(4) Where an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (3), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided:

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any compensation paid or recovered under this section.

CHAPTER XXI.

OF THE TRIAL OF WARRANT-CASES BY MAGISTRATES.

251. The following procedure shall be observed by Magistrates in the trial of warrant-cases:

252. (1) When the accused appears or is brought before a Magistrate, such Magistrate shall proceed to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution.

(2) The Magistrate shall ascertain, from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the case, and to be able to give evidence for the prosecution, and shall summon* to give evidence before himself such of them as he thinks necessary.

253. (1) If, upon taking all the evidence referred to in section 252, and making such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out, which, if un rebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

254. † If, when such evidence and examination have been taken and made, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this chapter, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

255. (1) The charge shall then be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make.

* See Sch. V. Form XXXI., *infra*.

† See ss. 252 and 208, *supra*.

(2) If the accused pleads guilty, the Magistrate shall record the plea, and may, in his discretion, convict him thereon.

256. (1) If the accused refuses to plead, or does not plead, or claims to be tried, he shall be required to state whether he wishes to cross-

Defence.

examine any, and, if so, which, of the witnesses for the prosecution whose evidence has been taken. If he says he does so wish, the witnesses named by him shall be recalled, and, after cross-examination and re-examination (if any), they shall be discharged. The evidence of any remaining witnesses for the prosecution shall next be taken, and, after cross-examination and re-examination (if any), they also shall be discharged. The accused shall then be called upon to enter upon his defence, and produce his evidence.

(2) If the accused puts in any written statement, the Magistrate shall file it with the record.

257. (1) If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay, or for defeating the ends of justice. Such ground shall be recorded by him in writing.

Process for compelling production of evidence at instance of accused.

Provided that, when the accused has cross-examined, or had the opportunity of cross-examining, any witness after the charge is framed, the attendance of such witness shall not be compelled under this section unless the Magistrate is satisfied that it is necessary for the purposes of justice.

(2) The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

258. (1) If in any case under this chapter, in which a charge has been framed, the Magistrate finds the accused not guilty, he shall record an order of acquittal.

Acquittal.

(2) If in any such case the Magistrate finds the accused guilty, he shall pass sentence upon him according to law.*

Conviction.

* See Sch. V., Form XXIX., *infra*.

259. When the proceedings have been instituted upon complaint and, upon any day fixed for the hearing of the case, the complainant is absent, **Absence of complainant.** and the offence may be lawfully compounded,* the Magistrate may, in his discretion, notwithstanding anything herein before contained, at any time before the charge has been framed, discharge the accused.

CHAPTER XXII.

OF SUMMARY TRIALS.

260.† (r) Notwithstanding any-
Power to try summarily. thing contained in this Code—

- (a) the District Magistrate,
 - (b) any Magistrate of the first class specially empowered in this behalf by the Local Government, and
 - (c) any Bench of Magistrates invested with the powers of a Magistrate of the first class and specially empowered in this behalf by the Local Government,
- may, if he or they think fit, try in a summary way all or any of the following offences—
- (a) offences not punishable with death, transportation, or imprisonment for a term exceeding six months;
 - (b) offences relating to weights and measures under sections 264, 265, and 266 of the Indian Penal Code;‡
 - (c) hurt under section 323 of the same Code;‡
 - (d) theft under section 379, 380, or 381 of the same Code,‡ where the value of the property stolen does not exceed fifty rupees;
 - (e) dishonest misappropriation of property under section 403 of the same Code‡ where the value of the property misappropriated does not exceed fifty rupees;

* See s. 345, *infra*.

† As to powers of Magistrates in Upper Burma, see the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., s V. As to European British subjects however, see *ibid*, s. XVII. As to summary trial of forest offences, see the Indian Forest Act (VII. of 1878), s. 65.

‡ Act XLV. of 1860.

- (f) receiving or retaining stolen property under section 411 of the same Code* where the value of such property does not exceed fifty rupees;
- (g) assisting in the concealment or disposal of stolen property under section 414 of the same Code* where the value of such property does not exceed fifty rupees;
- (h) mischief under section 427 of the same Code*;
- (i) house-trespass under section 448 and offences under sections 451, 456, and 457 of the same Code;
- (j) insult with intent to provoke a breach of the peace under section 504, and criminal intimidation under section 506 of the same Code*;
- (k) abetment of any of the foregoing offences;
- (l) an attempt to commit any of the foregoing offences when such attempt is an offence;
- (m) offences under section 20 of the Cattle Trespass Act, 1871:†

Provided that no case in which a Magistrate exercises the special powers conferred by section 34 shall be tried in a summary way.

(2) When, in the course of a summary trial, it appears to the Magistrate or Bench that the case is one which is of a character which renders it undesirable that it should be tried summarily, the Magistrate or Bench shall recall any witnesses who may have been examined, and proceed to rehear the case in manner provided by this Code.

261. The Local Government may confer on any Bench of Magistrates invested with the powers of a Magistrate of the second or third class, power to try summarily all or any of the following offences—

- (a) offences against the Indian Penal Code,* sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336, 341, 352, 426, and 447;
- (b) offences against Municipal Acts and the conservancy clauses of Police Acts which are punishable only with fine, or with imprisonment for a term not exceeding one month;

- (c) abatement of any of the foregoing offences ;
- (d) an attempt to commit any of the foregoing offences when such attempt is an offence.

262. (1) In trials under this chapter, the procedure prescribed for summons-cases shall be followed in summons-cases, and the procedure prescribed for warrant-cases shall be followed in warrant-cases, except as hereinafter mentioned.

- (2) No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this chapter.

263 In cases where no appeal lies, the Magistrate or Bench of Magistrates need not record the evidence of the witnesses, or frame a formal charge ; but he or they shall enter in such form, as the Local Government may direct the following particulars,—

- (a) the serial number ;
- (b) the date of the commission of the offence ;
- (c) the date of the report or complaint ;
- (d) the name of the complainant (if any) ;
- (e) the name, parentage, and residence of the accused ;
- (f) the offence complained of and the offence (if any) proved, and, in cases coming under clause (d), clause (e), clause (f), or clause (g) of sub-section (1) of section 260, the value of the property in respect of which the offence has been committed ;
- (g) the plea of the accused and his examination (if any) ;
- (h) the finding, and, in the case of a conviction, a brief statement of the reasons therefor ;
- (i) the sentence or other final order ; and
- (j) the date on which the proceedings terminated.

264. (1) In every case tried summarily by a Magistrate or Bench in which an appeal lies, such Magistrate or Bench shall, before passing sentence, record a judgment embodying the substance of the evidence and also the particulars mentioned in section 263.

- (2) Such judgment shall be the only record in cases coming within this section.

265. (1) Records made under section 263 and judgments Language of record and recorded under section 264 shall be judgment. written by the presiding officer, either in English or in the language of the Court, or, if the Court to which such presiding officer is immediately subordinate so directs, in such officer's mother-tongue.

(2) The Local Government may authorize any Bench of Bench may be authorized Magistrates empowered to try offences to employ clerk. summarily to prepare the aforesaid record or judgment by means of an officer appointed in this behalf by the Court to which such Bench is immediately subordinate, and the record or judgment so prepared shall be signed by each member of such Bench present taking part in the proceedings.

(3) If no such authorisation be given, the record prepared by a member of the Bench and signed as aforesaid shall be the proper record.

(4) If the Bench differ in opinion, any dissentient member may write a separate judgment.

CHAPTER XXIII.

OF TRIALS BEFORE HIGH COURTS AND COURTS OF SESSION.*

A.—Preliminary.

266. In this chapter, except in sections 276 and 307, and in Chapter XVIII., the expression "High Court" defined. means a High Court of Judicature established or to be established under The Indian High Courts Act, 1861,† and includes the Chief Court of the Punjab, the [Chief Court of Lower Burma],‡ and such other Courts§ as the Governor-General in Council may, by notification in the *Gazette of India*, declare to be High Courts for the purposes of this Chapter.

* As to Courts of Session in Upper Burma, see the Upper Burma Criminal Justice Regulation (V. of 1892), Sec., s. II. As to European British subjects, see s. XXII., *ibid*.

† Stat. 24 & 25 Vict., c. 104.

‡ The words in square brackets in s. 266 have been substituted by s. 47 of the Lower Burma Courts Act (VI. of 1900), Sch. I., for the words "Court of the Recorder of Rangoon."

§ In the Sonthal Parganas, the Commissioner is the High Court in certain cases—See the Sonthal Parganas Justice Regulation (V. of 1893), s. 4, as modified up to 1st October 1899.

Trials before High Court to be by jury.

267. All trials under this chapter before a High Court shall be by jury;

and, notwithstanding anything herein contained, in all criminal cases transferred to a High Court under this Code, or under the Letters Patent of any High Court established under the Indian High Courts Act, 1861,* the trial may, if the High Court so directs, be by jury.

Trials before Court of Session to be by jury or with assessors.

268. All trials before a Court of Session shall be either by jury, or with the aid of assessors.

269. (1) The Local Government may, with the previous sanction of the Governor-General in Council, by order, in the official Gazette, direct that the trial of all offences, or of any particular class of offences, before any Court of Session, shall be by jury in any district, and may, with the like sanction, revoke or alter such order.

(2) The Local Government, by like order, may also declare that, in the case of any district in which the trial of any offence is to be by jury, the trial of such offences shall, if the Judge, on application made to him or of his own motion, so directs, be by jurors summoned from a special jury list, and may revoke or alter such order.

(3) When the accused is charged at the same trial with several offences of which some are and some are not triable by jury, he shall be tried by jury for such of those offences as are triable by jury, and by the Court of Session, with the aid of the jurors as assessors, for such of them as are not triable by jury.

Trial before Court of Session to be conducted by Public Prosecutor.

270. In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.

B.—Commencement of Proceedings.

271. (1) When the Court is ready to commence the trial, the accused shall appear or be brought before it, and the charge shall be read out in Court and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried.

Commencement of trial.

* Stat. 24 & 25 Vict., c. 104.

Plea of guilty.

(2) If the accused pleads guilty, the plea shall be recorded, and he may be convicted thereon.

272. If the accused refuses to, or does not, plead, or if he claims to be tried, the Court shall proceed to choose jurors or assessors as hereinafter directed, and to try the case :

Provided that, subject to the right of objection hereinafter mentioned, the same jury may try, or the same assessors may aid in the trial of, as many accused persons successively as the Court thinks fit.

273. (1) In trials before the High Court, when it appears to the High Court, at any time before the commencement of the trial of the person charged, that any charge or any portion thereof is clearly unsustainable, the Judge may make on the charge an entry to that effect.

(2) Such entry shall have the effect of staying proceedings upon the charge or portion of the charge, as the case may be.

C.—*Choosing a Jury.*

274. (1) In trials before the High Court, the jury shall consist of nine persons.

(2) In trials by jury before the Court of Session, the jury shall consist of such uneven number, not being less than three, or more than nine, as the Local Government, by order applicable to any particular district, or to any particular class of offences in that district, may direct.

275. In a trial by jury before the Court of Session of a person not being an European or an American, a majority of the jury shall, if he so desires, consist of persons who are neither Europeans nor Americans.

276. The jurors shall be chosen by lot from the persons summoned to act as such in such manner as the High Court may from time to time by rule direct :

Provided that—

first, pending the issue under this section of rules for any Court, the practice now prevailing in such Court in respect to the choosing of jurors shall be followed;

secondly, in case of a deficiency of persons summoned, the number of jurors required may, with the leave of the Court, be chosen from such other persons as may be present;

trials before special jurors. *thirdly*, in the presidency-towns—

(a) if the accused person is charged with having committed an offence punishable with death, or,

(b) if in any other case, a Judge of the High Court so directs,

the jurors shall be chosen from the special jury list hereinafter prescribed; and,

fourthly, in any district for which the Local Government has declared that the trial of certain offences may be by special jury, the jurors shall, in any case in which the Judge so directs, be chosen from the special jury list prescribed in section 325.

277. (1) As each juror is chosen, his name shall be called aloud. and, upon his appearance, the accused shall be asked if he objects to be tried by such juror.

(2) Objection may then be taken to such juror by the accused or by the prosecutor, and the grounds of objection shall be stated:

Provided that, in the High Court, objections without grounds stated shall be allowed to the number of eight on behalf of the Crown and eight on behalf of the person or all the persons charged.

278. Any objection taken to a juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed—

(a) some presumed or actual partiality in the juror;

- (b) some personal ground, such as alienage, deficiency in the qualification required by any law or rule having the force of law for the time being in force, or being under the age of twenty-one or above the age of sixty years ;
- (c) his having, by habit or religious vows, relinquished all care of worldly affairs ;
- (d) his holding any office in or under the Court ;
- (e) his executing any duties of police, or being entrusted with police-duties ;
- (f) his having been convicted of any offence which, in the opinion of the Court, renders him unfit to serve on the jury ;
- (g) his inability to understand the language in which the evidence is given or, when such evidence is interpreted, the language in which it is interpreted ;
- (h) any other circumstance which, in the opinion of the Court, renders him improper as a juror.

279. (1) Every objection taken to a juror shall be decided by the Court, and such decision shall be recorded, and be final.

Decision of objection.

(2) If the objection is allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons, and chosen in manner provided by section 276, or, if there is no such other juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury :

Provided that no objection to such juror or other person is taken under section 278, and allowed.

280. (1) When the jurors have been chosen, they shall appoint one of their number to be foreman.

Foreman of jury.

(2) The foreman shall preside in the debates of the jury, deliver the verdict of the jury and ask any information from the Court that is required by the jury or any of the jurors.

(3) If a majority of the jury do not, within such time as the Judge thinks reasonable, agree in the appointment of a foreman, he shall be appointed by the Court.

281. When the foreman has been appointed, the jurors shall be sworn under the Indian Oaths Act, 1873.*

282. (1) If, in the course of a trial by jury, at any time before the return of the verdict, any juror, from any sufficient cause, is prevented from attending throughout the trial, or if any juror absents himself, and it is not practicable to enforce his attendance, or if it appears that any juror is unable to understand the language in which the evidence is given or when such evidence is interpreted, the language in which it is interpreted, a new juror shall be added, or the jury shall be discharged, and a new jury chosen.

(2) In each of such cases the trial shall commence anew.

283. The Judge may also discharge the jury whenever the prisoner becomes incapable of remaining at the bar.

D.—Choosing Assessors.

284. When the trial is to be held with the aid of assessors, two or more shall be chosen, as the Judge thinks fit, from the persons summoned to act as such.

285. (1) If, in the course of a trial with the aid of assessors, at any time before the finding, any assessor is, from any sufficient cause, prevented from attending throughout the trial, or absents himself, and it is not practicable to enforce his attendance, the trial shall proceed with the aid of the other assessor or assessors.

(2) If all the assessors are prevented from attending, or absent themselves, the proceedings shall be stayed, and a new trial shall be held with the aid of fresh assessors.

E.—Trial to Close of Cases for Prosecution and Defence.

286. (1) When the jurors or assessors have been chosen, the prosecutor shall open his case by reading from the Indian Penal Code† or other law the description of the offence charged, and stating shortly by what evidence he expects to prove the guilt of the accused.

* Act X. of 1873.

† Act XLV. of 1860

Examination of witnesses. (2) The prosecutor shall then examine his witnesses.

287. The examination of the accused duly recorded by or before the committing Magistrate shall be tendered by the prosecutor and read as evidence.*

288. The evidence of a witness duly taken in the presence of the accused before the committing Magistrate may, in the discretion of the presiding Judge, if such witness is produced and examined, be treated as evidence in the case.

289. (1) When the examination of the witnesses for the prosecution and the examination (if any) of the accused are concluded, the accused shall be asked whether he means to adduce evidence.

(2) If he says that he does not, the prosecutor may sum up his case; and, if the Court considers that there is no evidence that the accused committed the offence, it may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict of not guilty.

(3) If the accused, or any one of several accused, says that he means to adduce evidence, and the Court considers that there is no evidence, that the accused committed the offence, the Court may then in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict of not guilty.

(4) If the accused, or any one of several accused, says that he means to adduce evidence, and the Court considers that there is evidence that he committed the offence, or if, on his saying that he does not mean to adduce evidence, the prosecutor sums up his case, and the Court considers that there is evidence that the accused committed the offence, the Court shall call on the accused to enter on his defence.

290. The accused or his pleader may then open his case, stating the facts or law on which he intends to rely, and making such comments as he thinks necessary on the evidence for the prosecution.

He may then examine his witnesses (if any), and after their cross-examination and re-examination (if any), may sum up his case.

291. The accused shall be allowed to examine any witness not previously named by him if such witness is in attendance ; but he shall not, except as provided in section 211 and 231, be entitled of right to have any witness summoned other than the witnesses named in the list delivered to the Magistrate by whom he was committed for trial.

292. If the accused or any of the accused adduces any evidence, the prosecutor shall be entitled to reply.

293. (1) Whenever the Court thinks that the jury or assessors should view the place in which the offence charged is alleged to have been committed, or any other place in which any other transaction material to the trial is alleged to have occurred, the Court shall make an order to that effect, and the jury or assessors shall be conducted in a body, under the care of an officer of the Court, to such place, which shall be shown to them by a person appointed by the Court.

(2) Such officer shall not, except with the permission of the Court, suffer any other person to speak to, or hold any communication with, any of the jury or assessors, and, unless the Court otherwise directs, they shall when the view is finished, be immediately conducted back into Court.

294. If a juror or assessor is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be sworn, examined, cross-examined, and re-examined in the same manner as any other witness.

295. If a trial is adjourned, the jury or assessors shall attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial.

296. The High Court may, from time to time, make rules as to keeping the jury together during a trial before such Court lasting for more than one day ; and, subject to such rules, the presiding Judge may

order whether and in what manner the jurors shall be kept together under the charge of an officer of the Court, or whether they shall be allowed to return to their respective homes.

F.—Conclusion of Trial in Cases tried by Jury.

297. In cases tried by jury, when the case for the defence and the prosecutor's reply (if any) are concluded, the Court shall proceed to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided.

298. (1) In such cases it is the duty of the Judge—

- (a) to decide all questions of law arising in the course of the trial, and especially all questions as to the relevancy of facts which it is proposed to prove, and the admissibility of evidence or the propriety of questions asked by or on behalf of the parties; and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties;
- (b) to decide upon the meaning and construction of all documents given in evidence at the trial;
- (c) to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;
- (d) to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall bind the jurors.

(2) The Judge may, if he thinks proper, in the course of his summing-up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact, relevant to the proceeding.

Illustrations.

(a.) It is proposed to prove a statement made by a person not being a witness in the case on the ground that circumstances are proved which render evidence of such statement admissible:

It is for the Judge, and not for the jury, to decide whether the existence of those circumstances has been proved.

(b.) It is proposed to give secondary evidence of a document the original of which is alleged to have been lost or destroyed:

It is the duty of the Judge to decide whether the original has been lost or destroyed.

Duty of jury.

299. It is the duty of the jury—

- (a) to decide which view of the facts is true, and then to return the verdict which, under such view, ought, according to the direction of the Judge, to be returned ;
- (b) to determine the meaning of all technical terms (other than terms of law) and words used in an unusual sense which it may be necessary to determine whether such words occur in documents or not ;
- (c) to decide all questions which, according to law, are to be deemed questions of fact ;
- (d) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure, or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

Illustrations.

(a.) *A* is tried for the murder of *B* :

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts *A* ought to be convicted of murder or of culpable homicide, or to be acquitted :

It is the duty of the jury to decide which view of the facts is true, and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it.

(b.) The question is whether a person entertained a reasonable belief on a particular point—whether work was done with reasonable skill or due diligence :

Each of these is a question for the jury.

300. In cases tried by jury, after the Judge has finished his charge, the jury may retire to consider their verdict.
Retirement to consider.

Except with the leave of the Court, no person other than a juror shall speak to, or hold any communication with, any member of such jury.

301. When the jury have considered their verdict, the fore-

Delivery of verdict.

man shall inform the Judge what is their verdict, or what is the verdict of a majority.

302. If the jury are not unanimous, the Judge may require

Procedure where jury differ.

them to retire for further consideration. After such a period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous.

303. (1) Unless otherwise ordered by the Court, the jury

Verdict to be given on each charge.

shall return a verdict on all the charges on which the accused is tried, and the

Judge may question jury.

are necessary to ascertain

what their verdict is. Judge may ask them such questions as

Questions and answers to be recorded.

(2) Such questions and the answers to them shall be recorded.

304. When, by accident or mistake, a wrong verdict is deli-

Amending verdict.

vered, the jury may, before or immediately after it is recorded, amend the verdict, and it shall stand as ultimately amended.

305. (1) When, in a case tried before a High Court, the jury

Verdict in High Court when to prevail.

are unanimous in their opinion, or, when, as many as six are of one opinion, and the Judge agrees with them, the Judge shall give judgment in accordance with such opinion.

(2) When, in any such case the jury are satisfied that they will not be unanimous, but six of them are of one opinion, the foreman shall so inform the Judge.

Discharge of jury in other cases.

(3) If the Judge disagrees with the majority, he shall at once discharge the jury.

(4) If there are not so many as six who agree in opinion, the Judge shall, after the lapse of such time as he thinks reasonable, discharge the jury.

306. (1) When, in a case tried before the Court of Session,

Verdict in Court of Session when to prevail.

the Judge does not think it necessary to express disagreement with the verdict of the jurors, or of a majority of the jurors, he shall give judgment accordingly.

(2) If the accused is acquitted, the Judge shall record judgment of acquittal. If the accused is convicted, the Judge shall pass sentence on him according to law.

307. (1) If, in any such case, the Judge disagrees with the Procedure where Sessions verdict of the jurors, or of a majority of Judge disagrees with verdict. the jurors, on all or any of the charges on which the accused has been tried, and is clearly of opinion that it is necessary for the ends of justice to submit the case to the High Court, he shall submit the case accordingly, recording the grounds of his opinion, and, when the verdict is one of acquittal stating the offence which he considers to have been committed.

(2) Whenever the Judge submits a case under this section, he shall not record judgment of acquittal or of conviction on any of the charges on which the accused has been tried, but he may either remand the accused to custody, or admit him to bail.

(3) In dealing with the case so submitted, the High Court may exercise any of the powers which it may exercise on an appeal, and subject thereto, it shall, after considering the entire evidence, and after giving due weight to the opinions of the Sessions Judge and the jury, acquit or convict the accused of any offence of which the jury could have convicted him upon the charge framed and placed before it; and, if it convicts him, may pass such sentence as might have been passed by the Court of Session.

G.—Re-trial of Accused after Discharge of Jury.

308. Whenever the jury is discharged, the accused shall be Re-trial of accused after detained in custody or on bail (as the discharge of jury. case may be), and shall be tried by another jury unless the Judge considers that he should not be re-tried in which case the Judge shall make an entry to that effect on the charge, and such entry shall operate as an acquittal.

H.—Conclusion of trial in Cases tried with Assessors.

309. (1) When, in a case tried with the aid of assessors, the Delivery of opinions of case for the defence, and the prosecutor's assessors. reply (if any) are concluded, the Court may sum up the evidence for the prosecution and defence, and shall then require each of the assessors to state his opinion orally, and shall record such opinion.

(2) The Judge shall then give judgment, but, in doing so, shall not be bound to conform to the opinions of the assessors.

(3) If the accused is convicted, the Judge shall pass sentence on him according to law.

I.—Procedure in Case of Previous Conviction.

310. In the case of a trial by jury or with the aid of assessors, where the accused is charged with an offence committed after a previous conviction for any offence, the procedure laid down in sections 271, 286, 305, 306, and 309, shall be modified as follows:—

- (a) The part of the charge stating the previous conviction shall not be read out in Court, nor shall the accused be asked whether he has been previously convicted as alleged in the charge unless and until he has either pleaded guilty to, or been convicted of, the subsequent offence:
- (b) If he pleads guilty to, or is convicted of, the subsequent offence, he shall then be asked whether he has been previously convicted as alleged in the charge:
- (c) If he answers that he has been so previously convicted, the Judge may proceed to pass sentence on him accordingly; but, if he denies that he has been so previously convicted, or refuses to, or does not, answer such question, the jury or the Court and the assessors (as the case may be) shall then hear evidence concerning such previous conviction, and, in such case (where the trial is by jury), it shall not be necessary to swear the jurors again.

311. Notwithstanding anything in the last foregoing section, evidence of the previous conviction may be given at the trial for the subsequent offence if the fact of the previous conviction is relevant under the provisions of the Indian Evidence Act, 1872.*

f.—List of Jurors for High Court, and summoning Jurors for that Court.

312. The names of not more than four hundred persons shall at any one time be entered in the special jurors' list.
Number of special jurors.

313 (1) The Clerk of the Crown shall, before the first day of April in each year, and, subject to such rules as the High Court, from time to time, prescribes, prepare —

(a) a list of all persons liable to serve as common jurors; and

(b) a list of persons liable to serve as special jurors only.

(2) regard shall be had, in the preparation of the latter list to the property, character, and education of the persons whose names are entered therein.

(3) No person shall be entitled to have his name entered in the special jurors' list merely because he may have been entered in the special jurors' list for a previous year.

(4) The Governor-General in Council in the case of the High Court at Fort William in Bengal, and, in the case of other High Courts, the Local Government, may exempt any salaried officer of Government from serving as a juror.

(5) The Clerk of the Crown shall, subject to such rules as Discretion of officer preparing lists. aforesaid, have full discretion to prepare the said lists as seems to him to be proper, and there shall be no appeal from, or review of, his decision.

314. (1) Preliminary lists of persons liable to serve as common jurors and as special jurors, respectively, signed by the Clerk of the Crown, shall be published once in the local official Gazette before the fifteenth day of April next after their preparation.
Publication of lists, preliminary and revised.

(2) Revised lists of persons liable to serve as common jurors and special jurors, respectively, signed as aforesaid, shall be published once in the local official Gazette before the first day of May next after their preparation.

(3) Copies of the said lists shall be affixed to some conspicuous part of the Court-house.

315. (1) Out of the persons named in the revised lists aforesaid, there shall be summoned for each sessions in each presidency-town at least twenty-seven of those who are liable to serve on special juries and fifty-four of those who are liable to serve on common juries.

(2) No person shall be so summoned more than once in six months unless the number cannot be made up without him.

(3) If, during the continuance of any sessions, it appears that the number of persons so summoned is not sufficient, such number as may be necessary of other persons liable to serve as aforesaid shall be summoned for such sessions.

316. Whenever a High Court has given notice of its intention to hold sittings at any place outside the presidency-towns for the exercise of its original criminal jurisdiction, the Court of Session at such place shall, subject to any direction which may be given by the High Court, summon a sufficient number of jurors from its own list, in the manner hereinafter prescribed for summoning jurors to the Court of Session.

317. (1) In addition to the persons so summoned as jurors, the said Court of Session shall, if it thinks needful, after communication with the commanding officer, cause to be summoned such number of commissioned and non-commissioned officers in Her Majesty's Army resident within ten miles of its place of sitting as the Court considers to be necessary to make up the juries required for the trial of persons charged with offences before the High Court as aforesaid.

(2) All officers so summoned shall be liable to serve on such juries notwithstanding anything contained in this Code; but no such officer shall be summoned whom his commanding officer desires to have excused on the ground of urgent military duty, or for any other special military reason.

318. Any person summoned under section 315, section 316, or section 317, who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Judge, or fails to attend after an adjourn-

ment of the Court after being ordered to attend, shall be deemed guilty of a contempt, and be liable, by order of the Judge, to such fine as he thinks fit; and, in default of payment of such fine, to imprisonment for a term not exceeding six months in the civil jail until the fine is paid :

Provided that the Court may in its discretion remit any fine or imprisonment so imposed.

K.—List of Jurors and Assessors for Court of Session, and summoning Jurors and Assessors for that Court.

319. All male persons between the ages of twenty-one and sixty shall, except as next hereinafter mentioned, be liable to serve as jurors or assessors at any trial held within the district in which they reside, or, if the Local Government, on consideration of local circumstances, has fixed any smaller area in this behalf, within the area so fixed.

320. The following persons are exempt from liability to serve as jurors or assessors, namely—

Exemptions.

- (a) officers in civil employ superior in rank to a District Magistrate ;
- (b) salaried Judges ;
- (c) Commissioners and Collectors of Revenue or Customs ;
- (d) police-officers and persons engaged in the Preventive Service in the Customs Department ;
- (e) persons engaged in the collection of the revenue whom the Collector thinks fit to exempt on the ground of official duty ;
- (f) persons actually officiating as priests or ministers of their respective religions ;
- (g) persons in Her Majesty's Army, except when, by any law in force for the time being, they are specially made liable to serve as jurors or assessors ;
- (h) surgeons and others who openly and constantly practise the medical profession ;

- (i) legal practitioners (as defined by the Legal Practitioners Act, 1879*) in actual practice;
- (j) persons employed in the Post-Office and Telegraph Departments;
- (k) persons exempted from personal appearance in Court under the provisions of the Code of Civil Procedure, sections 640 and 641†;
- (l) other persons exempted by the Local Government from liability to serve as jurors or assessors.

321. (1) The Sessions Judge and the Collector of the district, or such other officer as the Local Government appoints in this behalf, shall prepare and make out, in alphabetical order, a list of persons liable to serve as jurors or assessors, and qualified, in the judgment of the Sessions Judge and Collector or other officer as aforesaid, to serve as such, and not likely to be successfully objected to under section 278, clauses (b) to (k), both inclusive.

(2) The list shall contain the name, place of abode, and quality or business of every such person; and, if the person is an European or an American, the list shall mention the race to which he belongs.

322. Copies of such list shall be stuck up in the office of the Collector or other officer as aforesaid, and in the Court-houses of the District Magistrate and of the District Court, and extracts therefrom in some conspicuous place in the town or towns in or near which the persons named in the extract reside.

323. To every such copy or extract shall be subjoined a notice stating that objections to the list will be heard and determined by the Sessions Judge and Collector or other officer as aforesaid, at the Sessions Court-house, and at a time to be mentioned in the notice.

324. (1) For the hearing of such objections, the Sessions Judge shall sit with the Collector or other officer as aforesaid, and shall, at the time and place mentioned in the notice, revise the list and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not suitable in their judgment to

* Act XVIII. of 1879.

† This reference to ss. 640 and 641 of Act XIV. of 1882 (the old Code) should now be meant to apply respectively to ss. 132 and 133 of Act V. of 1908 (the Code now in force).—See s. 158 of the latter Act.

serve as a juror or as an assessor, or who may establish his right to any exemption from service given by section 320, and insert the name of any person omitted from the list whom they deemed qualified for such service.

(2) In the event of a difference of opinion between the Sessions Judge and the Collector or other officer as aforesaid, the name of the proposed juror or assessor shall be omitted from the list.

(3) A copy of the revised list shall be signed by the Sessions Judge and Collector or other officer as aforesaid, and sent to the Court of Session.

(4) Any order of the Sessions Judge and Collector or other officer as aforesaid in preparing and revising the list shall be final.

(5) Any exemption not claimed under this section shall be deemed to be waived until the list is next revised.

Annual revision of list.

(6) The list so prepared and revised shall be again revised once in every year.

(7) The list so revised shall be deemed a new list, and shall be subject to all the rules hereinbefore contained as to the list originally prepared.

325. In the case of any district for which the Local Government has declared that the trial of certain offences shall, at the Judge's direction, be by special jury, the Sessions Judge and the Collector of such district or other officer as aforesaid shall prepare, in addition to the revised list hereinbefore prescribed, a special list containing the names of such jurors as are borne on the revised list, and are, in the opinion of such Sessions Judge and Collector or other officer as aforesaid, by reason of their possessing superior qualifications in respect of property, character, or education, fit persons to serve as special jurors: Provided always that the inclusion of the name of any person in such special list shall not involve the removal of his name from the revised list, nor relieve him of his liability to serve as an ordinary juror in cases not tried by special jury.

326. (1) The Sessions Judge shall ordinarily, seven days at least before the day which he may from time to time fix for holding the sessions, send a letter* to the District Magistrate requesting him to summon

District Magistrate to summon jurors and assessors.

* See Sch. V., Form XXXII., *infra*.

as many persons named in the said revised list or the said special list as seem to the Sessions Judge to be needed for trials by jury and trials with the aid of assessors at the said Sessions, the number to be summoned not being less than double the number required for any such trial.

(2) The names of the persons to be summoned shall be drawn by lot in open Court, excluding those who have served within six months, unless the number cannot be made up without them; and the name so drawn shall be specified in the said letter.

327. The Court of Session may direct jurors or assessors to be summoned at other periods than the period specified in section 326, when the number of trials before the Court renders the attendance of one set of jurors or assessors for a whole session oppressive, or whenever, for other reasons, such direction is found to be necessary.

328. Every summons* to a juror or assessor shall be in writing, and shall require his attendance as a juror or assessor, as the case may be, at a time and place to be therein specified.

329. When any person summoned to serve as a juror or assessor is in the service of Government or of a Railway Company, the Court to serve in which he is so summoned may excuse his attendance if it appears, on the representation of the head of the office in which he is employed, that he cannot serve as a juror or assessor, as the case may be, without inconvenience to the public.

330. (1) The Court of Session may, for reasonable cause, excuse any juror or assessor from attendance at any particular session.

(2) The Court of Session may, if it shall think fit, at the conclusion of any trial by special jury, direct that the jurors who have served on such jury shall not be summoned to serve again as jurors for a period of twelve months.

* See Sch. V., Form XXXIII., *infra*.

331. (1) At each session the said Court shall cause to be made a list of the names of those who have attended as jurors and assessors at such session.

(2) Such list shall be kept with the list of the jurors and assessors as revised under section 324.

(3) A reference shall be made in the margin of the said revised list to each of the names which are mentioned in the list prepared under this section.

332. (1) Any person summoned to attend as a juror or as an assessor who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Court, or fails to attend after an adjournment of the Court, after being ordered to attend, shall be liable by order of the Court of Session to a fine not exceeding one hundred rupees.

(2) Such fine shall be levied by the District Magistrate by attachment and sale of any moveable property belonging to such juror or assessor within the local limits of the jurisdiction of the Court making the order.

(3) For good cause shown, the Court may remit or reduce any fine so imposed.

(4) In default of recovery of the fine by attachment and sale, such juror or assessor may, by order of the Court of Session, be imprisoned in the civil jail for the term of fifteen days unless such fine is paid before the end of the said term.

L.—Special Provisions for High Courts.

333. At any stage of any trial before a High Court under this Code, before the return of the verdict, the Advocate-General may, if he thinks fit, inform the Court on behalf of Her Majesty that he will not further prosecute the defendant upon the charge; and thereupon all proceedings on such charge against the defendant shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal unless the presiding Judge otherwise directs.

334. For the exercise of its original criminal jurisdiction, every High Court shall hold sittings on such days and at such convenient intervals as the Chief Justice of such Court from time to time appoints.

335. (1) The High Court shall hold its sittings at the place at which it now holds them, or at such other place (if any) as the Governor-General in Council in the case of the High Court at Fort William, or the Local Government in the case of the other High Courts, may direct.

(2) But it may, from time to time, in the case of the High Court at Fort William, with the consent of the Governor-General in Council, and in all other cases with the consent of the Local Government, hold sittings at such other places within the local limits of its appellate jurisdiction as the High Court appoints.

(3) Such officer as the Chief Justice directs shall give notice beforehand in the local official Gazette of all sittings intended to be held for the exercise of the original criminal jurisdiction of the High Court.

336. The High Court may direct that all European British subjects and persons liable to be tried by it under section 214, who have been committed for trial by it within certain specified districts, or during certain specified periods of the year, shall be tried at the ordinary place of sitting of the Court, or direct that they shall be tried at a particular place named.

CHAPTER XXIV.

GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS.

337.* (1) In the case of any offence† triable exclusively by the Court of Session or High Court, the District Magistrate, a Presidency Magistrate, any Magistrate of the first class inquiring into the offence, or,

* As to tender of pardon to an accomplice in Upper Burma and trial of the case by the Magistrate himself except in cases affecting European British subjects, see the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., ss. VIII. and XVII.

† In places where the Punjab Frontier Crimes Regulation (IV. of 1887) is in force, the words, "triable exclusively by the Court of Session or High Court," are to be omitted.—See s. 9 of that Regulation.

with the sanction of the District Magistrate, any other Magistrate may, with the view of obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, the offence under inquiry, tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to such offence, and to every other person concerned, whether as principal or abettor, in the commission thereof.

(2) Every person accepting a tender under this section shall be examined as a witness in the case.

(3) Such person, if not on bail, shall be detained in custody until the termination of the trial* by the Court of Session or High Court, as the case may be.

(4) Every Magistrate, other than a Presidency Magistrate, who tenders a pardon under this section, shall record his reasons for so doing; and when any Magistrate has made such tender and examined the person to whom it has been made, he shall not try the case himself, although the offence which the accused appears to have committed may be triable by such Magistrate.

338. At any time after commitment, but before judgment is

Power to direct tender of pardon. passed, the Court to which the commitment is made may, with the view of obtaining on the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender, or order the committing Magistrate or the District Magistrate to tender, a pardon on the same condition to such person.

339. (1) Where a pardon has been tendered under section

Commitment of person to whom pardon has been tendered. 337 or section 338, and any person who has accepted such tender has, either by wilfully concealing anything essential, or by giving false evidence, not complied with the condition on which the tender was made, he may be tried for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the same matter.

(2) The statement made by a person who has accepted a tender of pardon may be given in evidence against him when the pardon has been forfeited under this section.

* In places where the Punjab Frontier Crimes Regulation (IV. of 1887) is in force, the words, " triable exclusively by the Court of Session or High Court," are to be omitted.—See s. 9 of that Regulation.

(3) No prosecution for the offence of giving false evidence in respect of such statement shall be entertained without the sanction of the High Court.

Right of accused to be defended.

340. Every person accused before any Criminal Court may of right be defended by a pleader.

341. If the accused, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial and, in the case of a Court other than a High Court, if such inquiry results in a commitment, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.

342. (1) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial, without previously warning the accused, put such questions to him as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined, and before he is called on for his defence.

(2) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them; but the Court and the jury (if any) may draw such inference from such refusal or answers as it thinks just.*

(3) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(4) No oath shall be administered to the accused.

343. Except as provided in sections 337 and 338, no influence, by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

344.† (1) If, from the absence of a witness or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of the proceedings, the Court may, if it thinks fit, postpone the proceedings.

* See the Indian Evidence Act (I. of 1872), s. 114, III (h.).

† Cf. the Indictable Offences Act, 1848 (Stat. 11 & 12 Vict., c. 42), s. 21.

ment of, or adjourn, any inquiry or trial, the Court may, if it thinks fit, by order in writing, stating the reasons therefor, from time to time postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.

(2) Every order made under this section by a Court other than a High Court shall be in writing signed by the presiding Judge or Magistrate.

Explanation.—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

345.* (1) The offences punishable under the sections of the Indian Penal Code† described in the first two columns of the table next following may be compounded by the persons mentioned in the third column of that table:

Offence.	Sections of Indian Penal Code applicable.	Person by whom Offence may be compounded.
Uttering words, &c., with deliberate intent to wound the religious feelings of any person.	298	The person whose religious feelings are intended to be wounded.
Causing hurt ...	323, 334	The person to whom the hurt is caused.

* For the section applicable instead of this section to hill-tribes to which the Kachin Hill-tribes Regulation (I. of 1895) and the Chin Hills Regulation (V. of 1896) have been applied, see Notifications Nos. 14 and 15, respectively, dated 30th June 1898, *Burma Gazette*, 1898, Pt. I., p. 322.

† Act XLV. of 1860.

Offence.	Sections of Indian Penal Code applicable.	Person by whom offence may be compounded.
Wrongfully restraining or confining any person.	341, 342	The person restrained or confined.
Assault or use of criminal force.	352, 355, 358	The person assaulted or to whom criminal force is used.
Unlawful compulsory labour ...	374	The person compelled to labour.
Mischief, when the only loss or damage caused is loss or damage to a private person.	426, 427	The person to whom the loss or damage is caused.
Criminal trespass ...	447	The person in possession of the property trespassed upon.
House-trespass ...	448	
Criminal breach of contract of service.	490, 491, 492	The person with whom the offender has contracted.
Adultery ...	497	The husband of the woman.
Enticing or taking away or detaining with a criminal intent a married woman.	498	
Defamation ...	500	The person defamed.
Printing or engraving matter knowing it to be defamatory.	501	
Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	502	
Insult intended to provoke a breach of the peace.	504	The person insulted.
Criminal intimidation, except when the offence is punishable with imprisonment for seven years.	506	The person intimidated.

(2) The offences of causing hurt and grievous hurt, punishable under section 324, section 325, section 335, section 337, or section 338 of the Indian Penal Code,* may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the person to whom the hurt has been caused.

(3) When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

(4) When the person who would otherwise be competent to compound an offence under this section is a minor, an idiot, or a lunatic, any person competent to contract on his behalf may compound such offence.

(5) When the accused has been committed for trial, or when he has been convicted, and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed or, as the case may be, before which the appeal is to be heard.

(6) The composition of an offence under this section shall have the effect of an acquittal of the accused.

(7) No offence shall be compounded except as provided by this section.

346. (1) If, in the course of an inquiry or a trial before a Magistrate in any district outside the presidency towns, the evidence appears to him to warrant a presumption that the case is one which should be tried or committed for trial by some other Magistrate in such district, he shall stay proceedings, and submit the case, with a brief report explaining its nature, to any Magistrate to whom he is subordinate, or to such other Magistrate having jurisdiction, as the District Magistrate directs.

(2) The Magistrate to whom the case is submitted may, if so empowered, either try the case himself, or refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial.

347. (1) If, in any inquiry before a Magistrate, or in any trial before a Magistrate before signing judgment, it appears to him at any stage of the proceedings that the case is one which ought to be tried by the

Procedure when, after commencement of inquiry or trial, Magistrate finds case should be committed.

Court of Session or High Court, and if he is empowered to commit for trial, he shall stop further proceedings, and commit the accused under the provisions hereinbefore contained.

(2) If such Magistrate is not empowered to commit for trial, he shall proceed under section 346.

348. Whoever, having been convicted of an offence punishable under Chapter XII. or Chapter XVII. of the Indian Penal Code* with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards, shall be committed to the Court of Session or High Court, as the case may be, unless the Magistrate before whom the proceedings are pending is of opinion that he can himself pass an adequate sentence if the accused is convicted:

Provided that, if the District Magistrate has been invested with powers under section 30 the case may be transferred to him instead of being committed to the Court of Session.

349.† (1) Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion—after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or that he ought to be required to execute a bond under section 106, he may record the opinion, and submit his proceedings, and forward the accused to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate.

(2) The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties, and recall and examine any witness who has already given evidence in the case, and may call for and take any further evidence, and shall pass such judgment, sentence, or order in the case as he thinks fit, and as is according to law:

* Act XLV. of 1860.

† In the Sonthal Parganas, any person, convicted under s. 349 by any Magistrate other than the Deputy Commissioner, may appeal to the Deputy Commissioner and if convicted by the Deputy Commissioner, may appeal to the Commissioner as High Court. See the Sonthal Parganas Justice Regulation (V. of 1893), s. 4, as modified up to October 1st, 1899.

Provided that he shall not inflict a punishment more severe than he is empowered to inflict under sections 32 and 33.

350. (1) Whenever any Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein, and is succeeded by another Magistrate who has and who exercises such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself; or he may resummon the witnesses, and recommence the inquiry or trial:

Conviction or commitment on evidence partly recorded by one Magistrate and partly by another.

Provided as follows—

- (a) in any trial the accused may, when the second Magistrate commences his proceedings, demand that the witnesses or any of them be resummoned and reheard,
- (b) the High Court or, in cases tried by Magistrates subordinate to the District Magistrate, the District Magistrate may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was had, if such Court or District Magistrate is of opinion that the accused has been materially prejudiced thereby, and may order a new inquiry or trial.

(2) Nothing in this section applies to cases in which proceedings have been stayed under section 346.

351. (1) Any person attending a Criminal Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of inquiry into or trial of any offence of which such Court can take cognizance, and which, from the evidence, may appear to have been committed, and may be proceeded against as though he had been arrested or summoned.

Detention of offenders attending Court.

(2) When the detention takes place in the course of an inquiry under Chapter XVIII. or after a trial has been begun, the proceedings in respect of such person shall be commenced afresh, and the witnesses reheard.

352. The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, Courts to be open.
to which the public generally may have access, so far as the same can conveniently contain them :

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally or any particular person shall not have access to, or be or remain in, the room or building used by the Court.

CHAPTER XXV.

OF THE MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS.

353. Except as otherwise expressly provided, all evidence Evidence to be taken in taken under Chapters XVIII., XX., presence of accused. XXI., XXII., and XXIII. shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in presence of his pleader.

354. In inquiries and trials (other than summary trials) under this Code by or before a Magistrate (other than a Presidency Magistrate) or Sessions Judge, the evidence of the witnesses shall be recorded in the following manner :—
Manner of recording evidence, outside presidency-towns.

355.* (1) In summons-cases tried before a Magistrate other than a Presidency Magistrate, and in cases of the offences mentioned in sub-section (1) of section 260, clauses (b) to (m), both inclusive, when tried by a Magistrate of the first or second class, and in all proceedings under section 514 (if not in the course of a trial), the Magistrate shall make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds.
Record in summons-cases and in trials of certain offences by first and second-class Magistrates.

(2) Such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record.

* Evidence recorded by Forest Officers under the Upper Burma Forest Regulation (V. of 1898), in accordance with s. 355, 356, or 357 of the Code, are admissible in subsequent trials before Magistrates.—See s. 71 (2) of that Regulation.

(3) If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same; and such memorandum shall form part of the record.

356.* (1) In all other trials before Courts of Session and Magistrates (other than Presidency side presidency-towns. Magistrates), and in all inquiries under Chapters XII. and XVIII., the evidence of each witness shall be taken down in writing in the language of the Court by the Magistrate or Sessions Judge, or in his presence and hearing, and under his personal direction and superintendence, and shall be signed by the Magistrate or Sessions Judge.

(2) When the evidence of such witness is given in English, the Magistrate or Sessions Judge may take it down in that language with his own hand, and, unless the accused is familiar with English, or the language of the Court is English, an authenticated translation of such evidence in the language of the Court shall form part of the record.

(3) In cases in which the evidence is not taken down in writing by the Magistrate or Sessions Judge, he shall as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes: and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall form part of the record,

(4) If the Magistrate or Sessions Judge is prevented from making a memorandum as above required, he shall record the reason of his inability to make it.

357.* (1) The Local Government may direct that, in any district or part of a district, or in proceedings before any Court of Session, or before any Magistrate or class of Magistrates, the evidence of each witness shall, in the cases referred to in section 356, be taken down by the Sessions Judge or Magistrate with his own hand, and in his mother tongue, unless he is prevented by any sufficient reason from taking down the evidence of any witness, in which

* See the note at the foot of the last-preceding page.

case he shall record the reason of his inability to do so, and shall cause the evidence to be taken down in writing from his dictation in open Court.

(2) The evidence so taken down shall be signed by the Sessions Judge or Magistrate, and shall form part of the record :

Provided that the Local Government may direct the Sessions Judge or Magistrate to take down the evidence in the English language, or in the language of the Court, although such language is not his mother-tongue.

358. In cases of the kind mentioned in section 355, the Magistrate may, if he thinks fit, take down the evidence of any witness in the manner provided in section 356, or, if, within the local limits of the jurisdiction of such Magistrate, the Local Government has made the order referred to in section 357, in the manner provided in the same section.

359. (1) Evidence taken under section 356 or section 357 shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative.

(2) The Magistrate or Sessions Judge may, in his discretion, take down, or cause to be taken down, any particular question and answer.

360. (1) As the evidence of each witness taken under section 356 or section 357 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader if he appears by pleader, and shall, if necessary, be corrected.

(2) If the witness denies the correctness of any part of the evidence when the same is read over to him, the Magistrate or Sessions Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary.

(3) If the evidence is taken down in a language different from that in which it has been given, and the witness does not understand the language in which it is taken down, the evidence so taken down shall be interpreted to him in the language in which it was given, or in a language which he understands.

361. (1) Whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open Court in a language understood by him.

(2) If he appears by pleader, and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted to such pleader in that language.

(3) When documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

362. (1) In every case in which a Presidency Magistrate imposes a fine exceeding two hundred rupees, or imprisonment for a term exceeding six months, he shall either take down the evidence of the witnesses with his own hand, or cause it to be taken down in writing from his dictation in open Court. All evidence so taken down shall be signed by the Magistrate, and shall form part of the record.

(2) Evidence so taken down shall ordinarily, be recorded in the form of a narrative, but the Magistrate may, in his discretion, take down, or cause to be taken down, any particular question or answer.

(3) Sentences passed under section 35 on the same occasion shall, for the purposes of this section, be considered as one sentence.

363. When a Sessions Judge or Magistrate has recorded the evidence of a witness, he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

364. (1) Whenever the accused is examined by any Magistrate, or by any Court other than a High Court established by Royal Charter, or the Chief Court of the Punjab "or the Chief Court of Lower Burma,"* the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full in the language in which he is examined, or, if that is not

* In s. 364, the words quoted have been inserted by the Lower Burma Courts Act (VI. of 1900).—See s. 47 and the first Schedule of that Act.

practicable, in the language of the Court, or in English; and such record shall be shown or read to him, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

(2) When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge of such Court, and such Magistrate or Judge shall certify under his own hand that the examination was taken in his presence and hearing, and that the record contains a full and true account of the statement made by the accused.

(3) In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound, unless he is a Presidency Magistrate, as the examination proceeds, to make a memorandum thereof in the language of the Court, or in English, if he is sufficiently acquainted with the latter language; and such memorandum shall be written and signed by the Magistrate or Judge with his own hand, and shall be annexed to the record. If the Magistrate or Judge is unable to make a memorandum as above required, he shall record the reason of such inability.

(4) Nothing in this section shall be deemed to apply to the examination of an accused person under section 263.

365.* Every High Court established by Royal Charter, the Record of evidence in High Chief Court of the Punjab, "and the Court. Chief Court of Lower Burma"* may, from time to time, by general rule, prescribe the manner in which evidence shall be taken down in cases coming before the Court, and the Judges of such Court shall take down the evidence or the substance thereof in accordance with the rule (if any) so prescribed.

CHAPTER XXVI.

OF THE JUDGMENT.

366. (1) The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced or the substance of such judgment shall be explained—
Mode of delivering judgment.

* In s. 365, the word "and" after the word "Charter" has been repealed, and the words quoted have been inserted, by the Lower Burma Courts Act (VI. of 1909).—See s. 47 and the first Schedule thereof.

(a) in open Court either immediately after the termination of the trial, or at some subsequent time of which notice shall be given to the parties or their pleaders, and

(b) in the language of the Court, or in some other language which the accused or his pleader understands :

Provided that the whole judgment shall be read out by the presiding Judge if he is requested so to do either by the prosecution or the defence.

(2) The accused shall, if in custody, be brought up, or, if not in custody, be required by the Court to attend, to hear judgment delivered, except where his personal attendance during the trial has been dispensed with, and the sentence is one of fine only, or he is acquitted, in either of which cases it may be delivered in the presence of his pleader.

(3) No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders, or any of them, the notice of such day and place.

(4) Nothing in this section shall be construed to limit in any way the extent of the provisions of section 537.

337. (1) Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the Court in the language of the Court, or in English, and shall contain the point or points for determination, the decision thereon, and the reasons for the decision ; and shall be dated and signed by the presiding officer in open Court at the time of pronouncing it.

(2) It shall specify the offence (if any) of which, and the section of the Indian Penal Code* or other law under which, the accused is convicted, and the punishment to which he is sentenced.

(3) When the conviction is under the Indian Penal Code,* and it is doubtful under which of two sections or under which of two parts of the same section of that Code,* the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.

(4) If it be a judgment of acquittal, it shall state the offence of which the accused is acquitted, and direct that he be set at liberty.

(5) If the accused is convicted of an offence punishable with death and the Court sentences him to any punishment other than death, the Court shall, in its judgment, state the reason why sentence of death was not passed :

Provided that, in trials by jury, the Court need not write a judgment, but the Court of Session shall record the heads of the charge to the jury.

363. (1) When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.
Sentence of death.

(2) No sentence of transportation shall specify the place to which the person sentenced is to be transported.
Sentence of transportation.

369. No Court other than a High Court, when it has signed its judgment, shall alter or review the same, except as provided in sections 395 and 484, or to correct a clerical error.
Court not to alter judgment.

370. Instead of recording a judgment in manner herein before provided, a Presidency Magistrate shall record the following particulars—
Presidency Magistrate's judgment.

- (a) the serial number of the case ;
- (b) the date of the commission of the offence ;
- (c) the name of the complainant (if any) ;
- (d) the name of the accused person and (except in the case of an European British subject) his parentage and residence ;
- (e) the offence complained of or proved ;
- (f) the plea of the accused and his examination (if any) ;
- (g) the final order ;
- (h) the date of such order ; and,
- (i) in all cases in which the Magistrate inflicts imprisonment or fine exceeding two hundred rupees, or both, a brief statement of the reasons for the conviction.

371. (1) On the application of the accused, a copy of the judgment, or, when he so desires, a translation in his own language, if practicable or in the language of the Court, shall be given to him without delay. Such copy shall, in any case other than a summons-case, be given free of cost.

(2) In trials by jury in a Court of Session, a copy of the heads of the charge to the jury shall, on the application of the accused, be given to him without delay and free of cost.

(3) When the accused is sentenced to death by a Sessions Judge, such Judge shall further inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

372. The original judgment shall be filed with the record of proceedings, and, where the original is recorded in a different language from that of the Court, and the accused so requires, a translation thereof into the language of the Court, shall be added to such record.

373. In cases tried by the Court of Session, the Court shall forward a copy of its finding and sentence (if any) to the District Magistrate within the local limits of whose jurisdiction the trial was held.

Court of Session to send copy of finding and sentence to District Magistrate.

CHAPTER XXVII.

OF THE SUBMISSION OF SENTENCES FOR CONFIRMATION.

374. When the Court of Session passes sentence of death, the proceedings shall be submitted to the High Court,* and the sentence shall not be executed unless it is confirmed by the High Court.

375. (1) If, when such proceedings are submitted, the High Court thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry

Power to direct further inquiry to be made or additional evidence to be taken

* See Sch. V., Form XXXIV., *infra*.

or take such evidence itself, or direct it to be made or taken by the Court of Session.

(2) Such inquiry shall not be made, nor shall such evidence be taken, in the presence of jurors or assessors, and, unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when the same is made or taken.

(3) When the inquiry and the evidence (if any) are not made and taken by the High Court, the result of such inquiry and the evidence shall be certified to such Court.

Power of High Court to confirm sentence or annul conviction

376. In any case submitted under section 374, whether tried with the aid of assessors or by jury, the High Court —

- (a) may confirm the sentence, or pass any other sentence warranted by law, or
- (b) may annul the conviction, and convict the accused of any offence of which the Sessions Court might have convicted him, or order a new trial on the same or an amended charge, or
- (c) may acquit the accused person :

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.

377. In every case so submitted, the confirmation of the sentence, or any new sentence or order passed by the High Court, shall, when such Court consists of two or more Judges, be made, passed, and signed by at least two of them.

Confirmation or new sentence to be signed by two Judges.

378. When any such case is heard before a Bench of Judges and such Judges are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge, and such Judge, after such hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Procedure in case of difference of opinion.

379. In cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High

Procedure in cases submitted to High Court for confirmation.

Court, send a copy of the order, under the seal of the High Court, and attested with his official signature, to the Court of Session.

380. Where proceedings are submitted to a Magistrate of the first class or a sub-divisional Magistrate as provided by section 562, such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself, or direct such inquiry or evidence to be made or taken.

Procedure in cases submitted by Magistrate not empowered to act under section 562.

CHAPTER XXVIII.

OF EXECUTION.

381. When a sentence of death passed by a Court of Session is submitted to the High Court for confirmation, such Court of Session shall, on receiving the order of confirmation or other order of the High Court thereon, cause such order to be carried into effect by issuing a warrant,* or taking such other steps as may be necessary.

382. If a woman sentenced to death is found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may, if it thinks fit, commute† the sentence to transportation for life.

383. Where the accused is sentenced to transportation or imprisonment in cases other than those provided for by section 381, the Court passing the sentence shall forthwith forward a warrant to the jail in which he is, or is to be, confined, and, unless the accused is already confined in such jail, shall forward him to such jail with the warrant.

384. Every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the jail or other place in which the prisoner is, or is to be, confined.

* See Sch., V. Forms XXXV. and XXXVI., *infra*.

† See Sch., V. Form XXXVI., *infra*.

Warrant with whom to be lodged.

385. When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor.

383.* Whenever an offender is sentenced to pay a fine, the Court passing the sentence may, in its discretion, issue a warrant for the levy of the amount by distress and sale of any moveable property belonging to the offender, although the sentence directs that, in default of payment of the fine, the offender shall be imprisoned.

337.* Such warrant may be executed within the local limits of the jurisdiction of such Court, and it shall authorize the distress and sale of any such property without such limits when endorsed by the District Magistrate or Chief Presidency Magistrate within the local limits of whose jurisdiction such property is found.

383.* (1) When an offender has been sentenced to fine only, and to imprisonment in default of payment of the fine, and the Court issues a warrant under section 386, it may suspend the execution of the sentence of imprisonment, and may release the offender on his executing a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before such Court on the day appointed for the return to such warrant, such day not being more than fifteen days from the time of executing the bond; and, in the event of the fine not having been realized, the Court may direct the sentence of imprisonment to be carried into execution at once.

(2) In any case in which an order for the payment of money has been made, on non-recovery of which imprisonment may be awarded, and the money is not paid forthwith, the Court may require the person ordered to make such payment to enter into a bond as prescribed in sub-section (1), and, in default of his so doing, may at once pass sentence of imprisonment as if the money had not been recovered.

* The provisions of ss. 386 to 389 have been declared to apply to fine imposed (1) under the Andaman and Nicobar Islands Regulation (III. of 1876) [see s. 35 as amended by the Andaman and Nicobar Islands Regulation (I. of 1884), s. 7]; and (2) under the Arakan Hill District Laws Regulation (IX. of 1874) (see s. 18 of that Regulation).

389.* Every warrant for the execution of any sentence may be issued either by the Judge or Magistrate who passed the sentence, or by his successor in office.

Who may issue warrant.

390. When the accused is sentenced to whipping only, the sentence shall be executed at such place and time as the Court may direct.

Execution of sentence of whipping only.

391. (1) When the accused is sentenced to whipping in addition to imprisonment in a case which is subject to appeal, the whipping shall not be inflicted until fifteen days from the date of the sentence, or, if an appeal is made within that time, until the sentence is confirmed by the Appellate Court; but the whipping shall be inflicted as soon as practicable after the expiry of the fifteen days or, in case of an appeal, as soon as practicable after the receipt of the order of the Appellate Court confirming the sentence.

Execution of sentence of whipping in addition to imprisonment.

(2) The whipping shall be inflicted in the presence of the officer in charge of the jail unless the Judge or Magistrate orders it to be inflicted in his own presence.

(3) No accused person shall be sentenced to whipping in addition to imprisonment when the term of imprisonment to which he is sentenced is less than three months.

392. (1) In the case of a person of or over sixteen years of age, whipping shall be inflicted with a light ratan not less than half an inch in diameter, in such mode, and on such part of the person, as the Local Government directs; and, in the case of a person under sixteen years of age, it shall be inflicted in such mode, and on such part of the person, and with such instrument as the Local Government directs.†

Mode of inflicting punishment.

(2) In no case shall such punishment exceed thirty stripes, "and, in the case of a person under sixteen years of age, it shall not exceed fifteen stripes."‡

Limit of number of stripes.

* See foot-note on last-preceding page.

† For manner in which whipping shall be inflicted—

(1) in Burma, see *Burma Gazette*, 1898, Pt. I, p. 307;

(2) in Assam, see *Assam Gazette*, 1899, Pt. II, p. 384;

(3) in the Punjab, see *Punjab Gazette*, 1899, Pt. I, p. 314.

‡ These words in s. 392 (2) have been added by the Whipping Act (IV. of 1909), s. 7.

393. No sentence of whipping shall be executed by instalments; and none of the following persons shall be punishable with whipping (namely)—

- (a) females ;
- (b) males sentenced to death, or to transportation, or to penal servitude, or to imprisonment for more than five years ;
- (c) males whom the Court considers to be more than forty-five years of age.

394. (1) The punishment of whipping shall not be inflicted unless a medical officer, if present, certifies, or, if there is not a medical officer present, unless it appears to the Magistrate or officer present, that the offender is in a fit state of health to undergo such punishment.

(2) If, during the execution of a sentence of whipping, a medical officer certifies, or it appears to the Magistrate or officer present, that the offender is not in a fit state of health to undergo the remainder of the sentence, the whipping shall be finally stopped.

395. (1) In any case in which, under section 394, a sentence of whipping is, wholly or partially, prevented from being executed, the offender shall be kept in custody till the Court which passed the sentence can revise it ; and the said Court may, at its discretion, either remit such sentence, or sentence the offender, in lieu of whipping, or in lieu of so much of the sentence of whipping as was not executed, to imprisonment for any term not exceeding twelve months, which may be in addition to any other punishment to which he may have been sentenced for the same offence.

(2) Nothing in this section shall be deemed to authorize any Court to inflict imprisonment for a term exceeding that to which the accused is liable by law, or that which the said Court is competent to inflict.

396. (1) When sentence is passed under this Code on an escaped convict, such sentence, if of death, fine, or whipping, shall, subject to the provisions hereinbefore contained, take effect, immediately, and

if of imprisonment, penal servitude, or transportation, shall take effect according to the following rules, that is to say—

(a) if the new sentence is severer in its kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately;

(g) when the new sentence is not severer in its kind than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment, penal servitude, or transportation, as the case may be, for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

Explanation.—For the purposes of this section—

(a) a sentence of transportation or penal servitude shall be deemed severer than a sentence of imprisonment;

(b) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement; and

(c) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

397. When a person already undergoing a sentence of imprisonment, penal servitude, or transportation is sentenced to imprisonment, penal servitude, or transportation, such imprisonment, penal servitude or transportation shall commence at the expiration of the imprisonment, penal servitude, or transportation to which he has been previously sentenced:

Provided that, if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction is one of transportation, the Court may, in its discretion, direct that the latter sentence shall commence immediately or at the expiration of the imprisonment to which he has been previously sentenced.

398. (1) Nothing in section 396 or section 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

(2) When an award of imprisonment in default of payment of a fine is annexed to a substantive sentence of imprisonment, or

to a sentence of transportation or penal servitude for an offence punishable with imprisonment, and the person undergoing the sentence is, after its execution, to undergo a further substantive sentence, or further substantive sentences, of imprisonment, transportation, or penal servitude, effect shall not be given to the award of imprisonment in default of payment of the fine until the person has undergone the further sentence or sentences.

399.* (1) When any person under the age of fifteen years is sentenced by any Criminal Court to imprisonment for any offence, the Court may direct that such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory established by the Local Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry, or which is kept by a person willing to obey such rules as the Local Government prescribes with regard to the discipline and training of persons confined therein.

(2) All persons confined under this section shall be subject to the rules so prescribed.

(3) This section shall not apply to any place in which the Reformatory Schools Act, 1897,† is for the time being in force.

400. When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

CHAPTER XXIX.

OF SUSPENSIONS, REMISSIONS, AND COMMUTATIONS OF SENTENCES.

401. (1) When any person has been sentenced to punishment for an offence, the Governor-General in Council or the Local Government may at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his

* S. 399 is only in force in Coorg and the Punjab.—See ss. 1 (3) and 3 of the Reformatory Schools Act (VIII. of 1897), and *supra*, s. 3 (1). It will cease to be in force in those provinces also on the extension to them of that Act.—See s. 3 of the Act.

† Act VIII. of 1897.

sentence, or remit the whole or any part of the punishment to which he has been sentenced.

(2) Whenever an application is made to the Governor-General in Council or the Local Government for the suspension or remission of a sentence, the Governor-General in Council or the Local Government, as the case may be, may require the presiding Judge of the Court, before or by which the conviction was had or confirmed, to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion.

(3) If any condition on which a sentence has been suspended or remitted, is in the opinion of the Governor-General in Council or of the Local Government, as the case may be, not fulfilled, the Governor-General in Council or the Local Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police-officer without warrant, and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

(5) Nothing herein contained shall be deemed to interfere with the right of Her Majesty to grant pardons, reprieves, respites, or remissions of punishment.

(6) The Governor-General in Council and the Local Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with.

402. The Governor-General in Council or the Local Government may, without the consent of the person sentenced, commute any one of the following sentences for any other mentioned after it—

death, transportation, penal servitude, rigorous imprisonment for a term not exceeding that to which he might have been sentenced, simple imprisonment for a like term, fine.

CHAPTER XXX.

OF PREVIOUS ACQUITTALS OR CONVICTIONS.

403. (1) A person who has once been tried by a Court of competent jurisdiction for an offence, and convicted or acquitted of such offence, shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 236, or for which he might have been convicted under section 237.

(2) A person acquitted or convicted of any offence may be, afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 235, sub-section (1).

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence if the consequence had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897,* or of section 188 of this Code.

Explanation—The dismissal of a complaint, the stopping of proceedings under section 249, the discharge of the accused or any entry made upon a charge under section 273, is not an acquittal for the purposes of this section.

Illustrations.

(a.) A is tried upon a charge of theft as a servant and acquitted: He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant, or, upon the same facts, with theft simply, or with criminal breach of trust.

* Act X. of 1897.

(b.) *A* is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that *A* committed robbery at the time when the murder was committed; he may afterwards be charged with, and tried for, robbery.

(c.) *A* is tried for causing grievous hurt and convicted. The person injured afterwards dies: *A* may be tried again for culpable homicide.

(d.) *A* is charged before the Court of Session and convicted of the culpable homicide of *B*. *A* may not afterwards be tried on the same facts for the murder of *B*.

(e.) *A* is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to *B*: *A* may not afterwards be tried for voluntarily causing grievous hurt to *B* on the same facts, unless the case comes within paragraph 3 of the section

(f.) *A* is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of *B*: *A* may be subsequently charged with, and tried for, robbery on the same facts.

(g.) *A*, *B* and *C* are charged by a Magistrate of the first class with, and convicted by him of, robbing *D*: *A*, *B*, and *C* may afterwards be charged with, and tried for, dacoity on the same facts.

PART VII.

OF APPEAL, REFERENCE, AND REVISION.

CHAPTER XXXI.—OF APPEALS.*

404 No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code, or by any other law for the time being in force.

405. Any person, whose application under section 89 for the delivery of property or the proceeds of the sale thereof has been rejected by any Court, may appeal to the Court to which appeals ordinarily lie from the sentences of the former Court.

406. Any person ordered by a Magistrate other than the District Magistrate or a Presidency Magistrate to give security for good behaviour under section 118 may appeal to the District Magistrate.

* For limitation of appeals, see now the Indian Limitation Act (IX. of 1908), the First Schedule, arts. 150, 154, 155, and 157.—See s. 32 and the Third Schedule of that Act.

407. (1) Any person convicted on a trial held by any Magistrate of the second or third class, or any person sentenced under section 349 by a Sub-divisional Magistrate of the second class, may appeal to the District Magistrate.

(2) The District Magistrate may direct that any appeal under this section or any class of such appeals shall be heard by any Magistrate of the first class subordinate to him, and empowered by the Local Government to hear such appeals, and thereupon such appeal or class of appeals may be presented to such subordinate Magistrate, or, if already presented to the District Magistrate, may be transferred to such subordinate Magistrate. The District Magistrate may withdraw from such Magistrate any appeal or class of appeals so presented or transferred.

408.* Any person convicted on a trial held by an Assistant Sessions Judge, a District Magistrate, or other Magistrate of the first class, or any person sentenced under section 349 by a Magistrate of the first class, may appeal to the Court of Session:

Provided as follows:—

- (a) Any European British subject so convicted may, at his option, appeal either to the High Court or the Court of Session;
- (b) when in any case an Assistant Sessions Judge or a Magistrate specially empowered under section 30 passes any sentence of imprisonment for a term exceeding four years, or any sentence of transportation, the appeal shall lie to the High Court;
- (c) when any person is convicted by a Magistrate of an offence under section 124A of the Indian Penal Code,† the appeal shall lie to the High Court.

* As to appeals from sentences of District Magistrates in Upper Burma in cases other than those affecting European British subjects, see the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., ss. X. and XVII.

Notwithstanding the provisions of s. 468 in places where the Punjab Frontier Crimes Regulation (IV. of 1887), is in force, appeals lie to the Chief Court, and not to a Court of Session.—See s. 7 (2) of that Regulation.

† Act XLV. of 1860.

409. An appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge, or by an Additional Sessions Judge.

410. Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge may appeal to the High Court.

411. Any person convicted on a trial held by a Presidency Magistrate may appeal to the High Court if the Magistrate has sentenced him to imprisonment for a term exceeding six months, or to fine exceeding two hundred rupees.

412. Notwithstanding anything hereinbefore contained, where an accused person has pleaded guilty and has been convicted by a Court of Session or any Presidency Magistrate or Magistrate of the first class on such plea, there shall be no appeal except as to the extent or legality of the sentence.

413. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a Court of Session or the District Magistrate or other Magistrate of the first class passes a sentence of imprisonment not exceeding one month only, or of fine not exceeding fifty rupees only, or of whipping only.

Explanation.—There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default of payment of fine when no substantive sentence of imprisonment has also been passed.

414.* Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in any case tried summarily in which a Magistrate empowered to act under section 260 passes a sentence of imprisonment not exceeding three months only, or of fine not exceeding two hundred rupees only, or of whipping only.

415. An appeal may be brought against any sentence referred to in section 413 or section 414 by which any two or more of the punishments therein

* As to restrictions in appeal in Upper Burma except those affecting European British subjects, see the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., ss. XI. and XVII.

mentioned are combined, but no sentence which would not otherwise be liable to appeal shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace.

Explanation.—A sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishments are combined within the meaning of this section.

416. Nothing in sections 413 and 414 applies to appeals from sentences passed under Chapter XXXIII. on European British subjects.

417. The Local Government may direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

418. An appeal may lie on a matter of fact as well as a matter of law, except where the trial was by jury, in which case the appeal shall lie on a matter of law only.

Explanation.—The alleged severity of a sentence shall, for the purposes of this section, be deemed to be a matter of law.

419. Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against, and, in cases tried by a jury, a copy of the heads of the charge recorded under section 367.

420. If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court.

421. (1) On receiving the petition and copy under section 419 or section 420, the Appellate Court shall peruse the same, and, if it considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily:

Provided that no appeal presented under section 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same.

(2) Before dismissing an appeal under this section, the Court may call for the record of the case, but shall not be bound to do so.

422. If the Appellate Court does not dismiss the appeal summarily, it shall cause notice to be given to the appellant or his pleader and to such officer as the Local Government may appoint in this behalf, of the time and place at which such appeal will be heard, and shall, on the application of such officer, furnish him with a copy of the grounds of appeal;

and, in cases of appeals under section 417, the Appellate Court shall cause a like notice to be given to the accused.

423.* (1) The Appellate Court shall then send for the record of the case, if such record is not already in Court. After perusing such record, and hearing the appellant or his pleader if he appears, and the Public Prosecutor if he appears, and, in case of an appeal under section 417, the accused if he appears, the Court may, if it considers that there is no sufficient ground for intermeddling, dismiss the appeal, or may,—

- (a) in an appeal from an order of acquittal, reverse such order, and direct that further inquiry be made, or that the accused be retried or committed for trial, as the case may be, or find him guilty, and pass sentence on him according to law;
- (b) in an appeal from a conviction, (1) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court, or committed for trial, or (2) after the finding, maintaining the sentence, or, with or without altering the finding, reduce the sentence, or (3), with or without such reduction, and with or without altering the finding, alter the nature of the sentence but subject to the provisions of section 106, sub-section (3), not so as to enhance the same;

* As to enhancement of punishment by Appellate Courts in Upper Burma and the Sonthal Parganas, except in cases affecting European British subjects, *see* respectively, the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., ss. XIII. and XVII., and the Sonthal Parganas Justice Regulation (V. of 1893) as modified up to 1st Oct. 1899, s. 4 (vi.).

(c) in an appeal from any other order, alter or reverse such order ;

(d) make any amendment or any consequential or incidental order that may be just or proper.

(2) Nothing herein contained shall authorize the Court to alter or reverse the verdict of a jury unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him.

424. The rules contained in Chapter XXVI. as to the judgment of subordinate Appellate Courts, of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment of any Appellate Court other than a High Court :

Provided that, unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.

425. (1) Whenever a case is decided on appeal by the High Court under this chapter, it shall certify its judgment or order to the Court by which the finding, sentence, or order appealed against was recorded or passed. If the finding, sentence, or order was recorded or passed by a Magistrate other than the District Magistrate, the certificate shall be sent through the District Magistrate.

(2) The Court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court ; and, if necessary, the record shall be amended in accordance therewith.

426. (1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended, and, also, if he is in confinement, that he be released on bail, or on his own bond.

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of any appeal by a convicted person to a Court subordinate thereto.

(3) When the appellant is ultimately sentenced to imprisonment, penal servitude, or transportation, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

427. When an appeal is presented under section 417, the

Arrest of accused in appeal High Court may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal, or admit him to bail.

428 (1) In dealing with any appeal under this chapter, the

Appellate Court may take Appellate Court, if it thinks additional further evidence, or direct it evidence to be necessary, shall record to be taken. its reasons, and may either take such evidence itself or direct it to be taken by a Magistrate, or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) Unless the Appellate Court otherwise directs, the accused or his pleader shall be present when the additional evidence is taken; but such evidence shall not be taken in the presence of jurors or assessors.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXV. as if it were an inquiry.

429. When the Judges composing the Court of Appeal are

Procedure where Judges equally divided in opinion, the case, of Court of Appeal with their opinions thereon, shall be laid equally divided- before another Judge of the same Court, and such Judge, after such hearing (if any) as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

430. Judgments and orders passed by an Appellate Court

Finality of orders on appeal. upon appeal shall be final except in the cases provided for in section 417 and Chapter XXXII.

431. Every appeal under section 417 shall finally abate on the death of the accused, and every other appeal under this chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant.

CHAPTER XXXII.

OF REFERENCE AND REVISION.

432. A Presidency Magistrate may, if he thinks fit, refer for the opinion of the High Court any question of law which arises in the hearing of any case pending before him, or may give judgment in any such case subject to the decision of the High Court on such reference, and, pending such decision, may either commit the accused to jail, or release him on bail to appear for judgment when called upon.

433. (1) When a question has been so referred, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Magistrate by whom the reference was made, who shall dispose of the case conformably to the said order.

(2) The High Court may direct by whom the costs of such reference shall be paid.

434.* (1) When any person has, in a trial before a Judge of a High Court consisting of more Judges than one, and acting in the exercise of its original criminal jurisdiction, been convicted of an offence, the Judge, if he thinks fit, may reserve and refer for the decision of a Court consisting of two or more Judges of such Court any question of law which has arisen in the course of the trial of such person, and the determination of which would affect the event of the trial.

(2) If the Judge reserves any such question, the person convicted shall, pending the decision thereon, be remanded to jail, or, if the Judge reserves.

* As to review in certain criminal cases by the Chief Court of Lower Burma, when no reference has been made under s. 434, see s. 12 of the Lower Burma Courts Act (VI. of 1900).

thinks fit, be admitted to bail; and the High Court shall have power to review the case, or such part of it as may be necessary, and finally determine such question, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment or order as the High Court thinks fit.

435.* (1) The High Court or any Sessions Judge or District

Power to call for records of inferior Courts. Magistrate, or any Sub-divisional Magistrate empowered by the Local Government in this behalf, may call for and examine the record of any proceeding, before any inferior Criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality, or propriety of any finding, sentence, or order recorded or passed, and as to the regularity of any proceedings of such inferior Court.

(2) If any Sub-divisional Magistrate acting under sub-section (1) considers that any such finding, sentence, or order is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the District Magistrate.

(3) Orders made under sections 143 and 144 and proceedings under Chapter XII. and section 176 are not proceedings within the meaning of this section.

(4) If an application under this section has been made either to the Sessions Judge or District Magistrate, no further application shall be entertained by the other of them.

436. When, on examining the record of any case under

Power to order commitment. section 435 or otherwise, the Sessions Judge or District Magistrate considers that such case is triable exclusively by the Court of Session, and that an accused person has been improperly discharged by the inferior Court, the Sessions Judge or District Magistrate may cause him to be arrested, and may thereupon, instead of directing a fresh inquiry, order him to be committed for trial upon the matter of which he has been, in the opinion of the Sessions Judge or District Magistrate, improperly discharged :

* In the Sonthal Parganas, the Court of Session shall not exercise any of the powers exercised by ss. 435 to 438.—*See* the Sonthal Parganas Justice Regulation (V. of 1893), s. 4, as modified up to 1st October 1899.

Provided as follows :—

- (a) That the accused has had an opportunity of showing cause to such Judge or Magistrate why the commitment should not be made ;
- (b) that, if such Judge or Magistrate thinks that the evidence shows that some other offence has been committed by the accused, such Judge or Magistrate may direct the inferior Court to inquire into such offence.

437.* On examining any record under section 435 or otherwise, the High Court or the Sessions Judge may direct the District Magistrate, by himself or by any of the Magistrates subordinate to him, to make, and the District Magistrate may himself make, or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203 or sub-section (3) of section 204, or into the case of any accused person who has been discharged.

438.* (1) The Sessions Judge or District Magistrate may, if he thinks fit, on examining, under section 435 or otherwise, the record of any proceeding, report for the orders of the High Court the result of such examination, and, when such report contains a recommendation that a sentence be reversed or altered, may order that the execution of such sentence be suspended, and, if the accused is in confinement, that he be released on bail, or on his own bond.

(2) An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this chapter in respect of any case which may be transferred to him by the Sessions Judge.

439. (1) In the case of any proceeding the record of which has been called for by itself, or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 195, 423, 426, 427, and 428, or on a Court by section 338, and may enhance the sentence ; and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in manner provided by section 429.

* See foot-note on p. 160, *supra*.

(2) No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard, either personally or by pleader, in his own defence.

(3) Where the sentence dealt with under this section has been passed by Magistrate acting otherwise than under section 34, the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has committed than might have been inflicted for such offence by a Presidency Magistrate or a Magistrate of the first class.

(4) Nothing in this section applies to an entry made under section 273, or shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction.

(5) Where, under this Code, an appeal lies, and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed.

440. No party has any right to be heard, either personally or by pleader, before any Court when exercising its powers of revision :
Optional with Court to hear parties.

Provided that the Court may, if it thinks fit, when exercising such powers, hear any party, either personally or by pleader, and that nothing in this section shall be deemed to affect section 439 sub-section (2).

441. When the record of any proceeding of any Presidency Magistrate is called for by the High Court under section 435, the Magistrate may submit with the record a statement setting forth the grounds of his decision or order and any facts which he thinks material to the issue; and the Court shall consider such statement before overruling or setting aside the said decision or order.
Statement by Presidency Magistrate of grounds of his decision to be considered by High Court.

442. When a case is revised under this chapter by the High Court, it shall, in manner hereinbefore provided by section 425, certify its decision or order to the Court by which the finding, sentence, or order revised was recorded or passed, and the Court or Magistrate to which the decision or order is so certified shall thereupon make such orders as are conformable to the decisions so certified; and, if necessary, the record shall be amended in accordance therewith.
High Court's order to be certified to lower Court or Magistrate.

PART VIII.—SPECIAL PROCEEDINGS.

CHAPTER XXXIII.

CRIMINAL PROCEEDINGS AGAINST EUROPEANS AND AMERICANS.*

443. No Magistrate unless he is a Justice of the Peace, and (except in the case of a District Magistrate or Presidency Magistrate) unless he is a Magistrate of the first class and an European British subject, shall enquire into or try charges against European British subjects.

444. No Judge presiding in a Court of Session, except the Sessions Judge, shall exercise jurisdiction over an European British subject unless he himself is an European British subject; and, if he is an Assistant Sessions Judge, unless he has held the office of Assistant Sessions Judge for at least three years, and has been specially empowered in this behalf by the Local Government.

Assistant Sessions Judge to have held office for three years, and to be specially empowered

445. Nothing in section 443 or section 444 shall prevent any Magistrate from taking cognizance of an offence committed by an European British subject in any case in which he could take cognizance of a like offence if committed by another person:

Provided that, if he issues any process for the purpose of compelling the appearance of an European British subject accused of an offence, such process shall be made returnable before a Magistrate having jurisdiction to enquire into or try the case.

446. Notwithstanding anything contained in section 32 or section 34, no Magistrate other than a District Magistrate or Presidency Magistrate shall pass any sentence on an European British subject other than imprisonment for a term which may extend to three months, or fine which may extend to one

* As to withdrawal from vagrants of their privileges as European British subjects, see s. 30 of the European Vagrancy Act (IX. of 1874) and s. 3 (1) of this Act, *supra*.

thousand rupees, or both, and a District Magistrate shall not pass any such sentence other than imprisonment for a term which may extend to six months, or fine which may extend to two thousand rupees, or both.

447. (1) When an European British subject is accused of an offence before a Magistrate, and such offence cannot, in the opinion of such Magistrate, be adequately punished by him, and is not punishable with death or with transportation for life, such Magistrate shall, if he thinks that the accused ought to be committed, commit him to the Court of Session, or, in the case of a Presidency Magistrate, to the High Court.*

(2) When the offence which appears to have been committed is punishable with death or with transportation for life, the commitment shall be to the High Court.

448. Where any person committed to the High Court under section 447 is charged with several offences of which one is punishable with death or transportation for life, and the others with a less punishment, and the High Court considers that he should not be tried for the offence punishable with death or transportation, the High Court may nevertheless try him for the other offences.

449. (1) Notwithstanding anything contained in section 31, no Court of Session shall pass on any European British subject any sentence other than a sentence of imprisonment for a term which may extend to one year or fine, or both.

(2) If, at any time after the commitment and before signing judgment, the presiding Judge thinks that the offence which appears to be proved cannot be adequately punished by such a sentence, he shall record his opinion to that effect, and transfer the case to the High Court. Such Judge may either himself bind over, or direct the committing Magistrate to bind over, the complainant and witnesses to appear before the High Court.

* The Chief Court of Lower Burma is the High Court for the whole of Burma (inclusive of the Shan States) in reference to proceedings against European British subjects and persons jointly charged with European British subjects.—See s. 8 (1) (a) of the Lower Burma Courts Act (VI. of 1906.)

450. (1) In trials of European British subjects before a High Court or Court of Session, if, before the first juror is called and accepted, or the first assessor is appointed, as the case may be, any such subject requires to be tried by a mixed jury, the trial shall be by a jury of which not less than half the number shall be Europeans or Americans, or both Europeans and Americans.

(2) When any such trial before a Court of Session would in the ordinary course be with the aid of assessors, the European British subject accused, or, where there are several European British subjects accused, all of them jointly, may, instead of claiming to be tried by a mixed jury under sub-section (1), require that not less than half the number of the assessors shall be Europeans or Americans, or both Europeans and Americans.

451. (1) In trials of European British subjects before a District Magistrate for any offence, any such subject may, in a summons-case, before he is heard in his defence under section 244, or in a warrant-case before he enters on his defence under section 256, claim that the trial shall be by a jury composed in manner prescribed by section 450.

(2) If a claim is made under sub-section (1) in a summons case at the time when the Magistrate proceeds under section 244 to hear the accused, or in a warrant-case at the time when the Magistrate calls upon the accused under section 256 to enter upon the defence, the Magistrate shall forthwith issue the necessary orders for the trial by a jury as aforesaid.

(3) If such a claim is made at an earlier stage of the proceedings, the Magistrate shall issue such orders whenever it appears to him from the evidence recorded that there will be a sufficient case to go before a jury.

(4) In every such case the Magistrate shall, notwithstanding anything contained in section 242, before issuing any orders as aforesaid, frame a formal charge.

(5) The provisions of sections 211, 216, 217, 219, and 220 shall, so far as may be, apply for the purpose of securing the attendance of the complainant, the accused, and the witnesses at every trial to be held under this section.

(6) The provisions of this Code relating to the procedure in a trial by jury before a Court of Session shall, as nearly as may be, apply to every trial under this section as if the District Magistrate were a Sessions Judge, and the accused had been committed to his Court for trial.

(7) All Courts may construe any of the provisions referred to in sub-section (5) or sub-section (6), in so far as they are made applicable by those sub-sections, with such verbal alterations not affecting the substance as may be necessary or proper to adapt the same to the matter before them.

(8) Nothing in this section shall affect the power of the Magistrate to commit an accused person for trial under section 347 or section 447.

(9) If an accused person claims to be tried by jury under this section, and, in the opinion of the District Magistrate, there is reason to believe that a jury composed in manner prescribed by section 450 cannot be constituted for the trial before himself, or cannot be so constituted without an amount of delay, expense, or inconvenience which, under the circumstances of the case, would be unreasonable, he may, instead of issuing orders for the trial before himself under this section, transfer the case for trial to such other District Magistrate, or to such Sessions Judge, as the High Court may, from time to time, by rules made by it in this behalf and approved by the Local Government, or by special order, direct.

(10) When a case is transferred under this section to a Sessions Judge or District Magistrate, he shall, with all convenient speed, try it with the same powers (including the power of commitment) and according to the same procedure as if he were a District Magistrate acting under this section.

452. In any case in which an European British subject is accused jointly with a person not being an European British subject, and such subject and Native jointly accused. European British subject is committed for trial before a High Court or Court of Session, such subject and person may be tried together, and the procedure on the trial shall be the same as it would have been had the European British subject been tried separately:

Provided that, if the European British subject requires under section 450 to be tried by a mixed jury or by a mixed set of assessors, and the

When Native may claim separate trial.

person not being an European British subject requires that he shall be tried separately, the latter person shall be tried separately in accordance with the provisions of Chapter XXIII.

453. (1) When any person claims to be dealt with as an European British subject, he shall state the grounds of such claim to the Magistrate before whom he is brought for the purposes of the inquiry or trial; and such Magistrate shall inquire into the truth of such statement, and allow the person making it a reasonable time within which to prove that it is true, and shall then decide whether he is or is not an European British subject, and shall deal with him accordingly. If any such person is convicted by such Magistrate, and appeals from such conviction, the burden of proving that the Magistrate's said decision was wrong shall lie upon him.

(2) When any such person is committed by the Magistrate for trial before the Court of Session, and such person, before such Court claims to be dealt with as an European British subject, such Court shall, after such further enquiry if any, as it thinks fit, decide whether he is or is not an European British subject, and shall deal with him accordingly. If he is convicted by such Court, and appeals from such conviction, the burden of proving that the Court's said decision was wrong shall lie upon him.

(3) When the Court before which any person is tried decides that he is not an European British subject, such decision shall form a ground of appeal from the sentence or order passed in such trial.

454. (1) If an European British subject does not claim to be dealt with as such by the Magistrate before whom he is tried, or by whom he is committed, or if, when such claim has been made before and disallowed by, the committing Magistrate, it is not again made before the Court to which such subject is committed, he shall be held to have relinquished his right to be dealt with as such European British subject, and shall not assert it in any subsequent stage of the same case.

(2) Unless the Magistrate has reason to believe that any person brought before him is not an European British subject, the Magistrate shall ask such person whether he is such a subject or not.

455. Where a person, who is not an European British sub-

Trial under this chapter of person not an European British subject. subject, is dealt with as such under this chapter, and does not object, the inquiry, commitment, trial, or sentence (as the case may be) shall not, by reason of such dealing, be invalid.

456. When any European British subject is unlawfully de-

Right of European British subject unlawfully detained to apply for order to be brought before High Court. tained in custody by any person, such European British subject or any person on his behalf may apply to the High Court* which would have jurisdiction over such European British subject in respect of any offence com-

* Original and appellate criminal jurisdiction is exercised by the High Courts at Madras and Bombay and in the North-Western Provinces and Oudh over European British subjects in outlying provinces and places in British India as follows :—

By High Court at Madras in	{ Coorg. The Upper Godavari District of the Central Provinces.
By High Court at Bombay in	{ The Nagpur, Narbada, and Chatisgarh Divisions of the Central Provinces. The Pargana of Manpur in Central India.
By High Court, N.-W. P., in	{ Oudh. The Jabalpur Division of the Central Provinces. The line of railway from Allahabad to Jabalpur, and the lands and buildings appurtenant thereto, other than the station at Satna The Cantonment of Morar (since ceded to the Gwalior State)—See Notification No. 2557-I. dated the 29th July 1886, <i>Gazette of India</i> , 1886, Pt. I., p. 453. Ajmere and British Merwara.

[See Notification No. 1203 dated the 23rd September 1874, *Gazette of India*, 1874, Pt. I., p. 484.]

The High Court at Fort William exercise original and appellate jurisdiction, and has all the functions of a High Court under the Code in all criminal proceedings against European British subjects and persons charged with European British subjects in the Andaman and Nicobar Islands.—See Notification No. 77 dated 15th March 1878, *Gazette of India*, 1878, Pt. I., p. 132.

Original and appellate jurisdiction is also exercised by the High Courts at Fort William, Madras, and Bombay, and in the North-Western Provinces, over European British subjects, being Christians, resident in certain Native States, territories and Chiefships.—See Notification No. 178-J. dated 23rd September 1874, *Gazette of India*, 1874, Pt. I. p. 485, No. 215-J. dated 18th December 1874. *Gazette of India*, 1874, Pt. I., p. 612; No. 119-J. and No. 120-J. dated 9th August 1875, *Gazette of India*, 1875, Pt. I. p. 404.

mitted by him at the place where he is detained, or to which he would be entitled to appeal from any conviction for any such offence, for an order directing the person detaining him to bring him before the High Court to abide such further order as it may pass.

457. The High Court, if it thinks fit, may, before issuing such order, inquire, on affidavit or otherwise, into the grounds on which it is applied for, and grant or refuse such application; or it may issue the order in the first instance, and when the person applying for it is brought before it, it may make such further order in the case as it thinks fit, after such inquiry (if any) as it thinks necessary.

458. The High Court may issue such orders throughout the Territories throughout territories within the local limits of its which High Court may appellate criminal jurisdiction, and such issue such orders. other territories as the Governor-General in Council may direct.

459. (1) Unless there is something repugnant in the context, all enactments heretofore or hereafter made by the Governor-General in Council, which confer on Magistrates or on the Court of Session jurisdiction over offences shall be deemed to apply to European British subjects, although such persons are not expressly referred to therein.

(2) Nothing in this section shall be deemed to authorize any Court to exceed the limits prescribed by this chapter as to the amount of punishment which it may inflict on an European British subject, or to confer jurisdiction on any Magistrate or any Judge presiding in a Court of Session, not being a Justice of the Peace.

460. In every case triable by jury or with the aid of assessors in which an European (not being an European British subject) or an American is the accused person, or one of the accused persons, not less than half the number of jurors or assessors shall, if practicable, and if such European or American so claims, be Europeans or Americans.

461. Whenever an European or American is charged before the Court of Session jointly, with a person not an European or American, and in compliance with a claim made under section 460, is tried by a jury, or with the aid of a set of assessors,

of which at least one-half consists of Europeans and Americans, the latter person shall, if he so claims, be tried separately.

462. (1) When a trial is to be held before the Court of Session in which the accused person, or one of the accused persons, is entitled to be tried by a jury constituted under the provisions of section 450 or section 460, or before the Court of a District Magistrate or Sessions Judge proceeding under section 451, the Court shall, three days at least before the day fixed for holding such trial, cause to be summoned, in the manner hereinbefore prescribed, as many European and American jurors as are required for the trial.

(2) The Court shall also, at the same time, in like manner, cause to be summoned the same number of other persons named in the revised list unless such number of such other persons has been already summoned for trials by jury at that Session.

(3) From the whole number of persons returned, the jurors who are to constitute the jury shall be chosen by lot in the manner prescribed in section 276 until a jury containing the proper number of Europeans or Americans, or a number approaching thereto as nearly as practicable, has been obtained :

Provided that, in any case in which the proper number of Europeans and Americans cannot otherwise be obtained, the Court may, in its discretion, for the purpose of constituting the jury, summon any person excluded from the list on the ground of his being exempted under section 320.

463. Criminal proceedings against European British subjects, Europeans not being European British subjects, and Americans, before the Court of Session and High Court, shall, except as otherwise expressly provided, be conducted according to the provisions of this Code.

CHAPTER XXXIV.

LUNATICS.

464. (1) When a Magistrate holding an enquiry or a trial

Procedure in case of accused being lunatic. has reason to believe that the accused is of unsound mind, and consequently incapable of making his defence, the Magistrate shall enquire into the fact of such unsoundness, and shall cause such person to be examined by the Civil Surgeon of the district or such other medical officer as the Local Government directs, and thereupon shall examine such Surgeon or other officer as a witness, and shall reduce the examination to writing.

(2) If such Magistrate is of opinion that the accused is of unsound mind, and consequently incapable of making his defence, he shall postpone further proceedings in the case.

465. (1) If any person committed for trial before a Court of

Procedure in case of person committed before Court of Session or High Court being lunatic. Session or a High Court appears to the Court at his trial to be of unsound mind, and consequently incapable of making his defence, the jury, or the Court with the aid of assessors, shall, in the first instance, try the fact of such unsoundness and incapacity, and if satisfied of the fact, shall pass judgment accordingly, and thereupon the trial shall be postponed.

(2) The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.

466. (1) Whenever an accused person is found to be of

Release of Lunatic pending investigation or trial. unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, if the case is one in which bail may be taken, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in his behalf.

(2) If the case is one in which bail may not be taken, or if

Custody of Lunatic. sufficient security is not given, the Magistrate or Court shall report the case to the Local Government, remanding the accused to custody pending

orders, and the Local Government may order the accused to be confined in a lunatic asylum jail, or other suitable place of safe custody, and the Magistrate or Court shall give effect to such order.

467. (1) Whenever an inquiry or a trial is postponed under Resumption of inquiry or section 464 or section 465, the Magistrate or Court, as the case may be, may at any time resume the enquiry or trial, and require the accused to appear or be brought before such Magistrate or Court.

(2) When the accused has been released under section 466, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in his behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

468. (1) If, when the accused appears or is again brought before the Magistrate or the Court, as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.

(2) If the Magistrate or Court considers the accused person to be still incapable of making his defence, the Magistrate or Court shall again act according to the provisions of section 464 or section 465, as the case may be.

469. When the accused appears to be of sound mind at the time of inquiry or trial, and the Magistrate is satisfied from the evidence given before him that there is reason to believe that the accused committed an act which, if he had been of sound mind, would have been an offence, and that he was, at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that it was wrong or contrary to law, the Magistrate shall proceed with the case, and, if the accused ought to be committed to the Court of Session or High Court, send him for trial before the Court of Session or High Court, as the case may be.

470.* Whenever any person is acquitted upon the ground of lunacy, that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature

* Compare the Criminal Lunatics Act, 1800 (Stat. 39 & 40 Geo. III., c. 94.)

of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not.

471. (1) Whenever such judgment states that the accused person committed the act alleged, the Magistrate or Court before whom or which the trial has been held shall, if such act would, but for the incapacity found, have constituted an offence, order such person to be kept in safe custody in such place and manner as the Magistrate or Court thinks fit, and shall report the case for the orders of the Local Government.

(2) The Local Government may order such person to be confined in a lunatic asylum, jail, or other suitable place of safe custody.

(3) The Governor-General in Council may, by general or special order, direct that any person whom the Local Government has ordered under this chapter to be confined in a lunatic asylum, jail, or other place of safe custody, shall be removed from the place where he is confined, to any lunatic asylum, jail, or other place of safe custody in British India.

(4) Local Government may empower the officer in charge of the jail, in which a person is confined under the provisions of section 466 or this section, to discharge all or any of the functions of the Inspector-General of Prisons under section 472, section 473, or section 474.

472. When any person is confined under the provisions of section 466 or section 471, the Inspector-General of Prisons, if such person is confined in a jail, or the visitors of the lunatic asylum, or any two of them if he is confined in a lunatic asylum, may visit him in order to ascertain his state of mind; and he shall be visited once at least in every six months by such Inspector-General, or by two of such visitors as aforesaid; and such Inspector-General or visitors shall make a special report to the Local Government as to the state of mind of such person.

473. If such person is confined under the provisions of section 466, and such Inspector-General or visitors shall certify that, in his or their opinion, such person is capable of making his defence.

making his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person under the provisions of section 468 ; and the certificate of such Inspector-General or visitors as aforesaid shall be receivable as evidence.

474. (1) If such person is confined under the provisions of section 466 or section 471, and such Inspector-General or visitors shall certify that, in his or their judgment, he may be discharged without danger of his doing injury to himself or to any other person, the Local Government may thereupon order him to be discharged, or to be detained in custody, or to be transferred to a public lunatic asylum if he has not been already sent to such an asylum ; and, in case it orders him to be transferred to an asylum, may appoint a commission consisting of a judicial and two medical officers.

(2) Such commission shall make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and shall report to the Local Government, which may order his discharge or detention as it thinks fit.

475. (1) Whenever any relative or friend of any person confined under the provisions of section 466 or section 471 desires that he shall be delivered over to his care and custody, the Local Government, upon the application of such relative or friend, and, on his giving security to the satisfaction of such Government that the person delivered shall be properly taken care of, and shall be prevented from doing injury to himself or to any other person, may order such person to be delivered to such relative or friends.

(2) Whenever such person is so delivered, it shall be upon condition that he shall be produced for the inspection of such officer and at such times as the Local Government directs.

(3) The provisions of sections 472 and 474 shall, *mutatis mutandis*, apply to persons delivered under the provisions of this section ; and the certificate of the inspecting officer appointed under this section shall be receivable as evidence.

CHAPTER XXXV.

PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE
ADMINISTRATION OF JUSTICE.

476. (1) When any Civil, Criminal, or Revenue Court is of opinion that there is ground for inquiring into any offence referred to in section 195, and committed before it, or brought under its notice in the course of a judicial proceeding, such Court, after making any preliminary inquiry that may be necessary, may send the case, for inquiry or trial, to the nearest Magistrate of the first class, and may send the accused in custody, or take sufficient security for his appearance, before such Magistrate; and may bind over any person to appear and give evidence on such inquiry or trial.

(2) Such Magistrate, shall thereupon proceed according to law, and as if upon complaint made and recorded under section 200, and may, if he is authorized under section 192 to transfer cases, transfer the inquiry or trial to some other competent Magistrate.

477. (1) Subject to the provisions of section 444, a Court of Session may charge a person for any offence referred to in section 195, and committed before it or brought under its notice in the course of a judicial proceeding, and may commit, or admit to bail and try, such person upon its own charge.

(2) Such Court may direct the Magistrate to cause the attendance of any witnesses for the purposes of the trial.

478. (1) When any such offence is committed before any Civil or Revenue Court, or brought under the notice of any Civil or Revenue Court in the course of a judicial proceeding, and the case is triable exclusively by the High Court or Court of Session, or such Civil or Revenue Court thinks that it ought to be tried by the High Court or Court of Session, such Civil or Revenue Court may, instead of sending the case under section 476 to a Magistrate for inquiry, itself complete the inquiry, and commit or hold to bail the accused person to take his trial before the High Court or Court of Session, as case may be.

(2) For the purposes of an inquiry under this section, the Civil or Revenue Court may, subject to the provisions, of section 443,

exercise all the powers of a Magistrate; and its proceedings in such inquiry shall be conducted as nearly as may be in accordance with the provisions of Chapter XVIII., and shall be deemed to have been held by a Magistrate.

479. When any such commitment is made by a Civil or Revenue Court in such cases. the Court shall send the charge with the order of commitment and the record of the case to the Presidency Magistrate, District Magistrate, or other Magistrate authorized to commit for trial, and such Magistrate shall bring the case before the High Court or Court of Session, as the case may be, together with the witnesses for the prosecution and defence.

480. (1) When any such offence as is described in section 175, section 178, section 179, section 180, or section 228 of the Indian Penal Code,* is committed in the view or presence of any Civil, Criminal, or Revenue Court, the Court may cause the offender, whether he is an European British subject or not, to be detained in custody;† and, at any time before the rising of the Court on the same day, may, if it thinks fit, take cognizance of the offence, and sentence the offender to fine not exceeding two hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

(2) Nothing in section 443 or section 444 shall be deemed to apply to proceedings under this section.

481. (1) In every such case the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

(2) If the offence is under section 228 of the Indian Penal Code* the record shall show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.

482. (1) If the Court in any case considers that a person accused of any of the offences referred to in section 480, and committed in its view or presence, should be imprisoned otherwise than in default of payment of

Procedure where Court considers that case should not be dealt with under section 480.

* Act XLV. of 1860.

† See Sch. V., Form XXXVIII., *infra*.

fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is, for any other reason, of opinion that the case should not be disposed of under section 480, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such accused person before such Magistrate, or, if sufficient security is not given, shall forward such person in custody to such Magistrate.

(2) The Magistrate to whom any case is forwarded under this section shall proceed to hear the complaint against the accused person in manner hereinbefore provided.

483. When the Local Government so directs, any Registrar

When Registrar or Sub-Registrar to be deemed a Civil Court within sections 480 and 482.

or any Sub-Registrar appointed under the Indian Registration Act, 1877,* shall be deemed to be a Civil Court within the meaning of sections 480 and 482.

484. When any Court has, under section 480, adjudged an

Discharge of offender on submission or apology. offender to punishment for refusing or omitting to do any thing which he was lawfully required to do, or for any intentional insult or interruption, the Court may, in its discretion, discharge the offender or remit the punishment on his submission to the order or requisition of such Court, or on apology being made to its satisfaction.

485. If any witness or person called to produce a document or

Imprisonment or committal of person refusing to answer or produce document.

thing before a Criminal Court refuses to answer such questions as are put to him, or to produce any document or thing in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant† under the hand of the presiding Magistrate or Judge, commit him to the custody of an officer of the Court, for any term not exceeding seven days unless, in the meantime, such person consents to be examined and to answer, or to produce the document or thing. In the

* Act III. of 1877.

† See Sch. V., Form XXXIX., *infra*.

event of his persisting in his refusal, he may be dealt with according to the provisions of section 480 or section 482, and, in the case of a Court established by Royal Charter, shall be deemed guilty of a contempt.

486. (1) Any person sentenced by any Court under section 480 or section 485 may, notwithstanding anything hereinbefore contained, appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

(2) The provisions of Chapter XXXI. shall, so far as they are applicable, apply to appeals under this section, and the Appellate Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.

(3) An appeal from such conviction by a Court of Small Causes in a Presidency-town shall lie to the High Court, and

an appeal from such conviction by any other Court of Small Causes shall lie to the Court of Session for the sessions division within which such Court is situate.

(4) An appeal from such conviction by any officer as Registrar or Sub-Registrar appointed as aforesaid may, when such officer is also Judge of a Civil Court, be made to the Court to which it would, under the preceding portion of this section, be made if such conviction were a decree by such officer in his capacity as such Judge: and, in other cases, may be made to the District Judge, or, in the presidency-towns, to the High Court.

487. (1) Except as provided in sections 477, 480, and 485, no Judge of a Criminal Court or Magistrate, other than a Judge of a High Court,* shall try any person for any offence referred to in section 195, when such offence is committed before himself, or in contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding.

(2) Nothing in section 476 or section 482 shall prevent a Magistrate empowered to commit to the Court of Session or High Court from himself committing any case to such Court.

* The words, "and the Recorder of Rangoon," have here been omitted, being repealed by the Lower Burma Courts Act (VI. of 1900), Sch. II.

CHAPTER XXXVI.

OF THE MAINTENANCE OF WIVES AND CHILDREN.

488. (1) If, any person having sufficient means, neglects or refuses to maintain his wife or his illegitimate or illegitimate child unable to maintain itself, the District Magistrate, a Presidency Magistrate, a Sub-divisional Magistrate, or a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding fifty rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs.

(2) Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance.

(3) If any person so ordered wilfully neglects to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant* for levying the amount due in manner hereinbefore provided for levying fines,† and may sentence‡ such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made :

Provided that, if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer if he is satisfied that there is just ground for so doing.

(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

* See Sch. V., Form XLI., *infra*.

† See ss. 386 to 389, *supra*.

‡ See Sch. V., Form XL., *infra*.

(6) All evidence under this chapter shall be taken in the presence of the husband or father, as the case may be, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed in the case of summary-cases :

Provided that, if the Magistrate is satisfied that he is wilfully avoiding service, or wilfully neglects to attend the Court, the Magistrate may proceed to hear and determine the case *ex parte*. Any order so made may be set aside for good cause shown, on application made within three months from the date thereof.

(7) The accused may tender himself as a witness, and in such case shall be examined as such.

(8) The Court, in dealing with applications under this section, shall have power to make such order as to costs as may be just.

(9) The accused may be proceeded against in any district where he resides or is, or where he last resided with his wife, or, as the case may be, the mother of the illegitimate child.

489. On proof of a change in the circumstances of any person

receiving under section 488 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife or child, the Magistrate may make such alteration in the allowance as he thinks fit. Provided that, if he increases the allowance, the monthly rate of fifty rupees in the whole be not exceeded.

490. A copy of the order of maintenance shall be given with-

out payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance is to be paid ; and such order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties, and the non-payment of the allowance due.

CHAPTER XXXVII.

DIRECTIONS OF THE NATURE OF A HABEAS CORPUS.

491. (1) Any of the High Courts of Judicature at Fort William, Madras, and Bombay may, ^{Power to issue directions of} the nature of a *habeas corpus*. whenever it thinks fit, direct—

- (a) that a person within the limits of its ordinary original civil jurisdiction be brought up before the Court to be dealt with according to law ;
- (b) that a person illegally or improperly detained in public or private custody within such limits be set at liberty ;
- (c) that a prisoner detained in any jail situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court ;
- (d) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners acting under the authority of any Commission from the Governor-General in Council for trial, or to be examined touching any matter pending before such Court-martial or Commissioners respectively ;
- (e) that a prisoner within such limits be removed from one custody to another for the purpose of trial ; and
- (f) that the body of a defendant within such limits be brought in on the Sheriff's return of *cepi corpus* to a writ of attachment.

(2) Each of the said High Courts may, from time to time, frame rules to regulate the procedure in cases under this section.

(3) Nothing in this section applies to persons detained under the Bengal State Prisoners Regulation, 1818,* Madras Regulation II. of 1819, or Bombay Regulation XXV. of 1827, or the State Prisoners Act, 1850,† or the State Prisoners Act, 1858.‡

* Ben. Reg. III. of 1818.

† Act XXXIV. of 1850.

‡ Act III. of 1858.

PART IX.—SUPPLEMENTARY PROVISIONS.

CHAPTER XXXVIII.

OF THE PUBLIC PROSECUTOR.

492. (1) The Governor-General in Council or the Local Government may appoint, generally, or in any case, or for any specified class of cases, in any local area, one or more officers to be called Public Prosecutors.

(2) In any case committed for trial to the Court of Session, the District Magistrate, or, subject to the control of the District Magistrate, the Sub-divisional Magistrate may, in the absence of the Public Prosecutor, or where no Public Prosecutor has been appointed, appoint any other person, not being an officer of Police below the rank of Assistant District Superintendent, to be Public Prosecutor for the purpose of such case.

493. The Public Prosecutor may appear and plead without any written authority before any Court in which any case of which he has charge is under inquiry, trial, or appeal; and, if any private person instructs a pleader to prosecute in any Court any person in any such case, the Public Prosecutor shall conduct the prosecution, and the pleader so instructed shall act therein under his directions.

494. Any Public Prosecutor appointed by the Governor-General in Council or the Local Government may, with the consent of the Court, in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any person; and upon such withdrawal,—

(a) if it is made before a charge has been framed, the accused shall be discharged;

(b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted.

495. (1) Any Magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person other than an official.

cer of police* below a rank to be prescribed by the Local Government in this behalf with the previous sanction of the Governor-General in Council, but no person, other than the Advocate-General, Standing Counsel, Government Solicitor, Public Prosecutor, or other officer generally or specially empowered by the Local Government in this behalf, shall be entitled to do so without such permission.

(2) Any such officer shall have the like power of withdrawing from the prosecution as is provided by section 494, and the provisions of that section shall apply to any withdrawal by such officer.

(3) Any person conducting the prosecution may do so personally, or by a pleader.

(4) An officer of police shall not be permitted to conduct the prosecution if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted.

CHAPTER XXXIX.

OF BAIL.

496. When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, and is prepared, at any time while in the custody of such officer or at any stage of the proceedings before such Court, to give bail, such person shall be released on bail:†

Provided that such officer or Court, if he or it thinks fit, may instead of taking bail from such person, discharge him on his executing a bond† without sureties for his appearance as hereinafter provided.

497. (1) When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear

* As to conduct of prosecutions by police-officers in Upper Burma notwithstanding anything in s. 495, see the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., s. XIV.

† See Sch. V., Form XLII, *infra*.

reasonable grounds for believing that he has been guilty of the offence of which he is accused.

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed such offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) Any Court may, at any subsequent stage of any proceeding under this Code, cause any person who has been released under this section to be arrested, and may commit him to custody.

498. The amount of every bond executed under this chapter shall, be fixed with due regard to the circumstances of the case, and shall not be excessive; and the High Court of Court of Session may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by a police-officer or Magistrate be reduced.

499. (1) Before any person is released on bail or released on his own bond, a bond,* for such sum of money as the police-officer or Court, as the case may be, thinks sufficient, shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police-officer or Court, as the case may be.

(2) If the case so require, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session, or other Court to answer the charge.

500. (1) As soon as the bond has been executed, the person for whose appearance it has been executed shall be released; and, when he is in jail, the Court admitting him to bail shall issue an order of release,* to the officer in charge of the jail, and such officer, on receipt of the order, shall release him.

* See Sch. V., Form XLIII., *infra*.

(2) Nothing in this section, section 496, or section 497 shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

501. If, through mistake, fraud, or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person released on bail be brought before it, and may order him to find sufficient sureties, and, on his failing so to do, may commit him to jail.

502. (1) All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond, either wholly or so far as relates to the applicants.

(2) On such application being made, the Magistrate shall issue his warrant of arrest directing that the person so released be brought before him.

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties; and, if he fails to do so, may commit him to custody.

CHAPTER XL.

OF COMMISSIONS FOR THE EXAMINATION OF WITNESSES.

503. (1) Whenever, in the course of an inquiry, a trial, or any other proceeding under this Code, it appears to a Presidency Magistrate, a District Magistrate, a Court of Session, or the High Court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense, or inconvenience, which, under the circumstances of the case, would be unreasonable, such Magistrate or Court may dispense with such attendance, and may issue a commission to any District Magistrate or Magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

(2) When the witness resides in the territories of any Prince or Chief in India in which there is an officer representing the British Indian Government, the commission may be issued to such officer.

(3) The Magistrate or officer to whom the commission is issued, or if he is the District Magistrate, he or such Magistrate of the first class as he appoints in this behalf shall proceed to the place where the witness is, or shall summon the witness before him, and shall take down his evidence in the same manner, and may, for this purpose, exercise the same powers, as in trials of warrant-cases under this Code.

(4) Where the commission is issued to such officer as is mentioned in sub-section (2), he may delegate his powers and duties under the commission to any officer subordinate to him whose powers are not less than those of a Magistrate of the first class in British India.

504. (1) If the witness is within the local limits of the jurisdiction of any Presidency Magistrate the Magistrate or Court issuing the commission may direct the same to the said Presidency Magistrate, who thereupon may compel the attendance of, and examine, such witness as if he were a witness in a case pending before himself.

(2) Nothing in this section shall be deemed to affect the power of the High Court to issue commissions under the Slave Trade Act, 1876,* section 3.

505. (1) The parties to any proceeding under this Code in which a commission is issued may respectively forward any interrogatories in writing which the Magistrate or Court directing the commission may think relevant to the issue, and the Magistrate or officer to whom the commission is directed shall examine the witness upon such interrogatories.

(2) Any such party may appear before such Magistrate or officer by pleader, or, if not in custody, in person, and may examine, cross-examine, and re-examine (as the case may be) the said witness.

* Stat. 39 & 40 Vict., c. 46.

506. Whenever, in the course of an inquiry or a trial or any other proceeding under this Code before any Magistrate other than a Presidency Magistrate or District Magistrate, it appears that a commission ought to be issued for the examination of a witness, whose evidence is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense, or inconvenience, which under the circumstances of the case, would be unreasonable, such Magistrate shall apply to the District Magistrate, stating the reasons for the application; and the District Magistrate may either issue a commission in the manner hereinbefore provided, or reject the application.

507. (1) After any commission issued under section 503 or section 506 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court out of which it issued; and the commission, the return thereto, and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

(2) Any deposition so taken, if it satisfies the conditions prescribed by section 33 of the Indian Evidence Act, 1872,* may also be received in evidence at any subsequent stage of the case before another Court.

508. In every case in which a commission is issued under section 506 or section 506, the inquiry, trial, or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

CHAPTER XLI.

SPECIAL RULES OF EVIDENCE.

509. (1) The deposition of a Civil Surgeon or other medical witness, taken and attested by a Magistrate in the presence of the accused

Deposition of medical witness.

* Act I. of 1872.

or taken on commission under Chapter XL., may be given in evidence in any inquiry, trial, or other proceeding under this Code, although the deponent is not called as a witness.

(2) The Court may, if it thinks fit, summon and examine such deponent as to the subject-matter of his deposition.
Power to summon medical witness.

510. Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial, or other proceeding under this Code.

511. In any inquiry, trial, or other proceeding under this Code, a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force,—
Previous conviction or acquittal how proved.

(a) by an extract certified, under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was had, to be a copy of the sentence or order; or,

(b) in case of a conviction either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered;

together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted or acquitted.

512. (1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try or commit for trial such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions. Any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged if the deponent is dead or incapable of giving evidence, or his attendance cannot be procured without an amount of delay, expense, or inconvenience, which, under the circumstances of the case, would be unreasonable.
Record of evidence in absence of accused.

(2) If it appears that an offence punishable with death or transportation has been committed by some person or persons unknown, the High Court may direct that any Magistrate of the first class shall hold an inquiry, and examine any witnesses who can give evidence concerning the offence. Any depositions so taken may be given in evidence against any person who is subsequently accused of the offence if the deponent is dead or incapable of giving evidence, or beyond the limits of British India.

CHAPTER XLII.

PROVISIONS AS TO BONDS.

513. When any person is required by any Court or officer to execute a bond, with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes, to such amount as the Court or officer may fix, in lieu of executing such bond.

514.* (1) Whenever it is proved to the satisfaction of the Court by which a bond under this Code has been taken, or of the Court of a Presidency Magistrate or Magistrate of the first class,

or, when the bond is for appearance before a Court, to the satisfaction of such Court,

that such bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid.†

(2) If sufficient cause is not shown, and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant† for the attachment and sale of the moveable property belonging to such person, or his estate if he be dead.

(3) Such warrant may be executed within the local limits of the jurisdiction of the Court which issued it; and it shall authorize the distress and sale of any moveable property belonging to such person without such limits when endorsed by the District Magis-

* See notes to ss. 110 to 112, *supra*.

† See Sch. V., Forms XLIV. to LIII., *infra*.

trate or Chief Presidency Magistrate, within the local limits of whose jurisdiction such property is found.

(4) If such penalty is not paid, and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Court which issued the warrant, to imprisonment in the civil jail for a term which may extend to six months.

(5) The Court may, at its discretion, remit any portion of the penalty mentioned, and enforce payment in part only.

(6) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond, but the party who gave the bond may be required to find a new surety.

515. All orders passed under section 514 by any Magistrate other than a Presidency Magistrate or District Magistrate shall be appealable to the District Magistrate, or, if not so appealed, may be revised by him.

516. The High Court or Court of Session may direct any Magistrate to levy the amount due on a bond to appear and attend at such High Court or Court of Session.

CHAPTER XLIII.

OF THE DISPOSAL OF PROPERTY.

517. (1) When an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal of any property or document produced before it, or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2) When a High Court or a Court of Session makes such order, and cannot, through its own officers, conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the District Magistrate.

(3) When an order is made under this section in a case in which an appeal lies, such order shall not (except when the property is live-stock, or is subject to speedy and natural decay) be

carried out until the period allowed for presenting such appeal has passed, or, when such appeal is presented within such period, until such appeal has been disposed of.

*Explanation.**—In this section the term “property” includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

518. In lieu of itself passing an order under section 517, the Court may direct the property to be delivered to the District Magistrate, or to a Sub-divisional Magistrate, who shall in such cases deal with it as if it had been seized by the police, and the seizure had been reported to him in the manner hereinafter mentioned.

519.† When any person is convicted of any offence which includes or amounts to, theft or receiving stolen property, and it is proved that any other person has brought the stolen property from him without knowing, or having reason to believe, that the same was stolen, and that any money has on his arrest been taken out of the possession of the convicted person, the Court may, on the application of such purchaser, and on the restitution of the stolen property to the person entitled to the possession thereof, order that, out of such money, a sum not exceeding the price paid by such purchaser be delivered to him.

520. Any Court of appeal, confirmation, reference, or revision may direct any order under section 517, section 518, or section 519, passed by a Court subordinate thereto, to be stayed pending consideration by the former Court, and may modify, alter, or annul such order, and make any further orders that may be just.

521. (1) On a conviction under the Indian Penal Code,‡
Destruction of libellous section 292, section 293, section 501, or
and other matter. section 502 the Court may order the

* Compare the Larceny Act (Stat. 24 & 25 Vict., c. 96), s. 1.

† Compare the Criminal Law Amendment Act, 1867. (Stat. 30 & 31 Vict., c. 35), s. 9.

‡ Act XLV. of 1860.

destruction of all the copies of the thing in respect of which the conviction was had, and which are in the custody of the Court, or remain in the possession or power of the person convicted.

(2) The Court may, in like manner, on a conviction under the Indian Penal Code,* section 272, section 273, section 274, or section 275, order the food, drink, drug, or medical preparation, in respect of which the conviction was had, to be destroyed.

522. (1) Whenever a person is convicted of an offence at-

Power to restore possession of immoveable property. tended by criminal force, and it appears to the Court that by such force any person has been dispossessed of any immoveable property, the Court may, if it thinks fit, order such person to be restored to the possession of the same.

(2) No such order shall prejudice any right or interest to or in such immoveable property which any person may be able to establish in a civil suit.

523. (1) The seizure by any police-officer of property taken

Procedure by police upon seizure of property taken under section 51 or stolen. under section 51, or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or, if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may

Procedure where owner of property seized unknown. order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit. If such person is unknown, the Magistrate may detain it, and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person, who may have a claim thereto, to appear before him, and establish his claim, within six months from the date of such proclamation.

524. (1) If no person within such period establishes his claim

Procedure where no claimant appears within six months. to such property, and if the person in whose possession such property was found is unable to show that it was legally

* Act XLV. of 1860.

acquired by him, such property shall be at the disposal of the Government, and may be sold under the orders of the Presidency Magistrate, District Magistrate, or Sub-divisional Magistrate, or of a Magistrate of the first class empowered by the Local Government in this behalf.

(2) In the case of every order passed under this section, an appeal shall lie to the Court to which appeals against sentences of the Court passing such order would lie.

525. If the person entitled to the possession of such property is unknown or absent, and the property is subject to speedy and natural decay, or the Magistrate to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner, the Magistrate may at any time direct it to be sold, and the provisions of sections 523 and 524 shall, as nearly as may be practicable, apply to the net proceeds of such sale.

CHAPTER XLIV.

OF THE TRANSFER OF CRIMINAL CASES.

High Court may transfer case or itself try it.

526. (1) Whenever it is made to appear to the High Court—

- (a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or
 - (b) that some question of law of unusual difficulty is likely to arise, or
 - (c) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same, or
 - (d) that an order under this section will tend to the general convenience of the parties or witnesses, or
 - (e) that such an order is expedient for the ends of justice or is required by any provision of this Code,
- it may order—
- (i) that any offence be inquired into or tried by any Court not empowered under sections 177 to 184 (both inclusive), but, in other respects, competent to inquire into or try such offence;

- (ii) that any particular criminal case or appeal, or class of such cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;
- (iii) that any particular criminal case or appeal be transferred to, and tried before, itself; or
- (iv) that an accused person be committed for trial to itself, or to a Court of Session.

(2) When the High Court withdraws for trial before itself any case from any Court other than the Court of a Presidency Magistrate, it shall, except as provided in section 267, observe in such trial the same procedure which that Court would have observed if the case had not been so withdrawn.

(3) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative.

(4) Every application for the exercise of the power conferred by this section shall be made by motion, which shall, except when the applicant is the Advocate-General, be supported by affidavit or affirmation.

(5) When an accused person makes an application under this section, the High Court may direct him to execute a bond, with or without sureties, conditioned that he will, if convicted, pay the costs of the prosecutor.

(6) Every accused person making any such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(7) Nothing in this section shall be deemed to affect any order made under section 197.

(8) If, in any criminal case or appeal, before the commencement of the hearing, the Public Prosecutor, the complainant, or the accused adjournment on application under this section. notifies, to the Court before which the case or appeal is pending, his intention to make an application under this section in respect of the case, the Court shall exercise powers of postponement or

adjournment given by section 344 in such a manner as will afford a reasonable time for the application being made, and an order being obtained thereon, before the accused is called on for his defence, or, in the case of an appeal, before the hearing of the appeal.

527. (1) The Governor-General in Council may, by notification in the *Gazette of India*, direct the transfer of any particular criminal case or appeal from one High Court* to another High Court, or from any Criminal Court subordinate to one High Court to any other Criminal Court of equal or superior jurisdiction subordinate to another High Court whenever it appears to him that such transfer will promote the ends of justice, or tend to the general convenience of parties or witnesses.

(2) The Court to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in, or presented to such Court.

528. (1) Any Chief Presidency Magistrate, District Magistrate or Sub-divisional Magistrate may withdraw any case from, or recall any case which he had made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

(2) The Local Government may authorize the District Magistrate to withdraw from any Magistrate subordinate to him, either such classes of cases as he thinks proper, or particular classes of cases.

(3) A Magistrate making an order under this section shall record in writing his reasons for making the same.

(4) The head of a village under Madras Regulation IV. of 1821 is a Magistrate for the purposes of this section.

* For the purposes of this section, the Court of the Recorder of Rangoon is to be deemed to be a High Court.—See the Lower Burma Courts Act (XI. of 1889), s. 48.

CHAPTER XLV.

OF IRREGULAR PROCEEDINGS.

Irregularities which do not vitiate proceedings.

529. If any Magistrate not empowered by law to do any of the following things, namely—

- (a) to issue a search-warrant under section 98;
- (b) to order, under section 155, the police to investigate an offence;
- (c) to hold an inquest under section 176;
- (d) to issue process, under section 186, for the apprehension of a person within the local limits of his jurisdiction who has committed an offence outside such limits;
- (e) to take cognizance of an offence under section 190, subsection (1), clause (a) or clause (b);
- (f) to transfer a case under section 192;
- (g) to tender a pardon under section 337 or section 338;
- (h) to sell property under section 524 or section 525; or
- (i) to withdraw a case and try it himself under section 528, erroneously in good faith* does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

530. If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely—

Irregularities which vitiate proceedings.

- (a) attaches and sells property under section 88;
- (b) issues a search-warrant for a letter, parcel, or other thing in the post-office or a telegram in the Telegraph Department;
- (c) demands security to keep the peace;
- (d) demands security for good behaviour;
- (e) discharges a person lawfully bound to be of good behaviour;
- (f) cancels a bond to keep the peace;

* For definition of "good faith," see the Indian Penal Code (Act XLV. of 1860), ss. 52 and 76, and the General Clauses Act (X. of 1897), s. 3 (20);

- (g) makes an order under section 133 as to a local nuisance ;
- (h) prohibits, under section 143, the repetition or continuance of a public nuisance ;
- (i) issues an order under section 144 ;
- (j) makes an order under Chapter XII. ;
- (k) takes cognizance, under section 190, sub-section (1), clause (c), of an offence ;
- (l) passes a sentence, under section 349, on proceedings recorded by another Magistrate ;
- (m) calls, under section 435, for proceedings ;
- (n) makes an order for maintenance ;
- (o) revises, under section 515, an order passed under section 514 ;
- (p) tries an offender ;
- (q) tries an offender summarily ; or
- (r) decides an appeal,

his proceedings shall be void.

581. No finding, sentence, or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial, or other proceeding in the course of which it was arrived at or passed took place in a wrong sessions division, district, sub-division, or other local area unless it appears that such error has in fact occasioned a failure of justice.

582. (1) If any Magistrate or other authority purporting to exercise powers duly conferred, which were not so conferred, commits an accused person for trial before a Court of Session or High Court, the Court to which the commitment is made may, after perusal of the proceedings, accept the commitment if it considers that the accused has not been injured thereby unless, during the inquiry and before the order of commitment, objection was made on behalf, either of the accused, or of the prosecution, to the jurisdiction of such Magistrate or other authority.

(2) If such Court considers that the accused was injured, or if such objection was so made, it shall quash the commitment, and direct a fresh inquiry by a competent Magistrate.

588. (1) If any Court, before which a confession or other statement of an accused person recorded or purporting to be recorded under section 164 or section 364 is tendered or has been received in evidence, finds that any of the provisions of either of such sections have not been complied with by the Magistrate recording the statement, it shall take evidence that such person duly made the statement recorded; and, notwithstanding anything contained in the Indian Evidence Act, 1872,* section 91, such statement shall be admitted if the error has not injured the accused as to his defence on the merits.

(2) The provisions of this section apply to Courts of appeal, reference, and revision.

584. An omission to ask any person whether he is an European British subject, in a case to which sub-section (2) of section 454 applies, shall not affect the validity of any proceeding.

585. (1) No finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed unless, in the opinion of the Court of appeal or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal or revision thinks that a failure of justice has been occasioned by an omission to frame a charge, it shall order that a charge be framed, and that the trial be recommenced from the point immediately after the framing of the charge.

586. (1) If an offence triable with the aid of assessors is tried by a jury, the trial shall not, on that ground only, be invalid.

(2) If an offence triable by a jury is tried with the aid of assessors, the trial shall not, on that ground only, be invalid unless the objection is taken before the Court records its finding.

587.*† Subject to the provisions hereinbefore contained, no

Finding or sentence when reversible by reason of error or omission in charge or other proceedings.

finding, sentence, or order passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII., or on appeal or revision, on account—

- (a) of any error, omission, or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment, or other proceedings before or during trial, or in any inquiry or other proceedings under this Code, or
- (b) of the want of, or any irregularity in, any sanction required by section 195 or any irregularity in proceedings taken under section 476, or
- (c) of the omission to revise any list of jurors or assessors in accordance with section 324, or
- (d) of any misdirection in any charge to a jury unless such error, omission, irregularity, want, or misdirection has in fact occasioned a failure of justice.

Explanation.—In determining whether any error, omission, or irregularity in any proceeding under this Code has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

Illustration.

A Magistrate being required by law to sign a document signs it by initials only : This is purely an irregularity, and does not affect the validity of the proceeding.

* Compare the Summary Jurisdiction Act, 1847-1848 (Stat. 11 & 12 Vict., c. 43), s. 9.

† In Upper Burma, orders are not reversible on appeal or revision on technical grounds alone.—*See* the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., s. XV. As to European British subjects, however, *see* s. XVII., *ibid.*

In the Sonthal Parganas orders are not reversible on appeal or revision on account of irregularity of procedure unless it is likely to occasion a failure of justice.—*See* the Sonthal Parganas Regulation (V. of 1893), s. 4, as modified up to the 1st October 1899.

538. No distress made under this Code shall be deemed un-

Distress not illegal nor dis-
trainer a trespasser for defect
or want of form in proceed-
ings.

other proceedings relating

lawful, nor shall any person making the
same be deemed a trespasser, on account
of any defect or want of form in the
summons, conviction, writ of distress, or
thereto.

CHAPTER XLVI.

MISCELLANEOUS.

539. Affidavits and

Courts and persons before
whom affidavits may be
sworn.

affirmations to be used before any High
Court or any officer of such Court may
be sworn and affirmed before such Court
of the Clerk of the Crown, or any Com-
missioner or other person appointed by such Court for that purpose,
or any Judge, or any Commissioner for taking affidavits in any Court
of Record in British India, or any Commissioner to administer oaths
in England or Ireland, or any Magistrate authorized to take affidavits
or affirmations in Scotland.

540. Any Court may, at any stage of any inquiry, trial, or

Power to summon material
witness, or examine person
present.

other proceeding under this Code, sum-
mon any person as a witness, or examine
any person in attendance, though not
summoned as a witness, or recall and re-examine any person already
examined; and the Court shall summon and examine or recall and
re-examine any such person if his evidence appears to it essential to
the just decision of the case.

541. (1) Unless when otherwise provided by any law for the

Power to appoint place of
imprisonment.

liable to be imprisoned or
shall be confined.

time being in force, the Local Govern-
ment may direct in what place any person
committed to custody under this Code

(2) If any person liable to be imprisoned or committed

Removal to criminal jail of
accused or convicted persons
who are in confinement in
civil jail, and their return to
the civil jail.

to custody under this Code is in confine-
ment in a civil jail, the Court or Magis-
trate ordering the imprisonment or com-
mittal may direct that the person be re-
moved to a criminal jail.

(g) When a person is removed to a criminal jail under sub-section (1), he shall, on being released therefrom, be sent back to the civil jail, unless either—

(a) three years have elapsed since he was removed to the criminal jail, in which case he shall be deemed to have been discharged from the civil jail under section 342* of the Code of Civil Procedure; or

(b) the Court which ordered his imprisonment in the civil jail has certified to the officer in charge of the criminal jail that he is entitled to be discharged under section 341* of the Code of Civil Procedure.

542. (1) Notwithstanding anything contained in the Prisoners'

Power of Presidency Magistrate to order prisoner in jail to be brought up for examination.

Testimony Act, 1869,† any Presidency Magistrate desirous of examining, as a witness or an accused person in any case pending before him, any person confined in any jail within the local limits of his jurisdiction, may issue an order to the officer in charge of the said jail requiring him to bring such prisoner in proper custody at a time to be therein named to the Magistrate for examination.

(2) The officer so in charge, on receipt of such order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the jail for the purpose aforesaid.

543. When the services of an interpreter are required by any

Interpreter to be bound to interpret truthfully.

Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

544. Subject to any rules made by the Local Government

Expenses of complainants and witnesses.

with the previous sanction of the Governor-General in Council, any Criminal Court may, if it thinks fit, order payment, on the part of Government, of the reasonable expenses of any complainant or witness

* These references to ss. 342 and 341 of Act XIV. of 1882 should now be meant to apply to s. 58 of Act V. of 1908 (the present Code in force).—See s. 158 of the latter Act.

† Act XV. of 1869.

attending for the purposes of any inquiry, trial, or other proceeding before such Court under this Code.*

545.† (1) Whenever, under any law in force for the time being, a Criminal Court imposes a fine, or confirms, in appeal, revision or otherwise, a sentence of fine, or a sentence of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

(a) in defraying expenses properly incurred in the prosecution;

(b) in compensation for the injury caused by the offence committed, where substantial compensation is, in the opinion of the Court, recoverable by civil suit.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

546. At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under section 545.

547. Any money (other than a fine) payable by virtue of any order made under this Code shall be recoverable as if it were a fine.

* For rules made in exercise of these powers for—

(1) Assam, *see* the Assam Manual of Local Rules and Orders, Ed. 1893, p. 188;

(2) Bombay, *see* the Bombay List of Local Rules and Orders, Ed. 1897, Vol. I., pp. 393 and 394;

(3) Burma, *see* the Burma Rules Manual, Ed. 1897, p. 107;

(4) Central Provinces, *see* the Central Provinces List of Local Rules and Orders, Ed. 1896, p. 43;

(5) Madras, *see* the Madras List of Local Rules and Orders, Ed. 1898, Vol. I., p. 190;

(6) North-Western Provinces and Oudh, *see* the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 108.

† In Upper Burma the Court imposing a fine or confirming a sentence of an officer under s. 9 (4) of the Upper Burma Ruby Regulation (XII. of 1887) may presume, for the purposes of s. 545, that injury has been caused by the offence, and that substantial compensation is recoverable by civil suit in respect to the injury.—*See* s. 9 (5) of that Regulation.

548. If any person affected by a judgment or order passed by a Criminal Court desires to have a copy of the Judge's charge to the jury, or of any order or deposition or other part of the record, he shall, on applying for such copy, be furnished therewith:

Provided that he pays for the same, unless the Court, for some special reason, thinks fit to furnish it free of cost.

549.* (1) The Governor-General in Council may make rules consistent with this Code and the Army Act† or any similar law for the time being in force, as to the cases in which persons subject to military law shall be tried by a Court to which this Code applies, or by Court-martial, and when any person is brought before a Magistrate, and charged with an offence for which he is liable, under the Army Act,† section 41, to be tried by a Court-martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the regiment, corps, or detachment to which he belongs, or to the commanding officer of the nearest military station, for the purpose of being tried by Court-martial.

(2) Every Magistrate shall, on receiving a written application for that purpose by the commanding officer of any body of troops stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence.

550. Any police-officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence. Such police-officer, if subordinate to the officer in charge of a police-station, shall forthwith report the seizure to that officer.

* For rules made under this section for delivery to the military authorities of persons charged with offences under s. 41 of the Army Act (Stat. 44 & 45 Vict., c. 58) for which they are liable to be tried by Court-martial under that Act, see *Gazette of India*, 1887, Pt. I., p. 387. These rules were originally made under s. 549 of Act X. of 1882, and are kept in force by s. 2 (2) of this Act.

† Stat. 44 & 45 Vict., c. 58.

551. Police-officers superior in rank to an officer in charge of a police-station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

552. Upon complaint made to a Presidency Magistrate or Distract Magistrate on oath of the abduction or unlawful detention of a woman, or of a female child under the age of fourteen years, for any unlawful purpose, he may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian, or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.

553. (1) Whenever any person causes a police-officer to arrest another person in a presidency-town, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding fifty rupees, to be paid by the person so causing the arrest to the person so arrested, for his loss of time and expenses in the matter, as the Magistrate thinks fit.

(2) In such cases, if more persons than one are arrested, the Magistrate may, in like manner, award to each of them such compensation, not exceeding fifty rupees, as such Magistrate thinks fit.

(3) All compensation awarded under this section may be recovered as if it were a fine, and, if it cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid.

554. (1) With the previous sanction of the Governor-General in Council, the High Court at Fort William, and, with the previous sanction of the Local Government, any other High Court established by Royal Charter, may, from time to time, make rules for the inspection of the records of subordinate Courts.

(2) Every High Court not established by Royal Charter may, from time to time, and with the previous sanction of the Local Government,—

Power of other High Courts to make rules for other purposes.

- (a) make rules for keeping all books, entries, and accounts to be kept in all Criminal Courts subordinate to it, and for the preparation and transmission of any returns or statements to be prepared and submitted by such Court;
- (b) frame forms for every proceeding in the said Courts for which it thinks that a form should be provided;
- (c)* make rules for regulating its own practice and the practice and proceedings of all Criminal Courts subordinate to it; and
- (d) make rules for regulating the execution of warrants issued under this Code for the levy of fines;

Provided that the rules and forms made and framed under this section shall not be inconsistent with this Code or any other law in force for the time being.

(3) All rules made under this section shall be published in the local official Gazette.

555. Subject to the power conferred by section 553,† and by section 15 of the Indian High Courts Act, 1861,‡ the forms set forth in the fifth Schedule, with such variation as the circumstances of each case require, may be used for the retrospective purposes therein mentioned, and, if used, shall be sufficient.

553. No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself.

Explanation.—A Judge or Magistrate shall not be deemed to be a party or personally interested, within the meaning of this section, to or in any case by reason only that he is a Municipal

* In Upper Burma and the Sonthal Parganas, rules under s. 554 (2) (c) may regulate (a) fees for processes, and (b) the fees to be paid for copies and inspection of records.—*See*, respectively, the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., s. XVI, and the Sonthal Parganas Justice Regulation (V. of 1893), s. 4 (VIII) as modified upto 1st October 1899.

† *Sic*, read "554."

‡ Stat 24 & 25 Vict., c. 104.

Commissioner* or otherwise concerned therein in a public capacity, or by reason only that he has viewed the place in which an offence is alleged to have been committed, or any other place in which any other transaction material to the case is alleged to have occurred, and made an enquiry in connection with the case.

Illustration.

A, as Collector, upon consideration of information furnished to him, directs the prosecution of *B* for a breach of the Excise Laws: *A* is disqualified from trying this case as a Magistrate.

557. No pleader who practises in the Court of any Magistrate in a presidency-town or district shall sit as a Magistrate in such Court, or in any Court within the jurisdiction of such Court.

558. The Local Government may determine what, for the purposes of this Code, shall be deemed to be the language of each Court within the territories administered by such Government other than the High Court established by Royal Charter.

Powers of Governor-General in Council and Local Government exercisable from time to time.

559. All powers conferred by this Code on the Governor-General in Council, or on the Local Government, may be exercised from time to time as occasion requires.

560. A public servant having any duty to perform in connection with the sale of any property under this Code shall not purchase or bid for the property.

Special provisions with respect to offence of rape by a husband.

561. (1) Notwithstanding anything in this Code, no Magistrate except a Chief Presidency Magistrate or District Magistrate shall—

(a) take cognizance of the offence of rape where the sexual intercourse was by a man with his wife, or

(b) commit the man for trial for the offence.

* Or a member of a District Board in the Punjab.—See s. 58 of the Punjab District Boards Act (XX. of 1883).

Or a member of a municipal Committee in the Punjab (see s. 188 of the Punjab Municipal Act, XX. of 1891) in Burma see the Burma Municipal Act (Burma Act III. of 1868), and, in the Central Provinces, see the Central Provinces Municipal Act (XVIII. of 1889), s. 144.

(2) And, notwithstanding anything in this Code, if a Chief Presidency Magistrate or District Magistrate deems it necessary to direct an investigation by a police-officer with respect to such an offence as is referred to in sub-section (1), no police-officer of a rank below that of police-inspector shall be employed either to make, or to take part in, the investigation.

First Offenders.

562. In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating, or any other offence under the Indian Penal Code,* punishable with not more than two years' imprisonment before any Court, and no previous conviction is proved against him, if it appears to the Court before whom he is so convicted that, regard being had to the youth, character, and antecedents of the offender, to the trivial nature of the offence, and to any extenuating circumstances under which the offence was committed, it is expedient that the offender be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, and during such period (not exceeding one year) as the Court may direct, to appear and receive sentence when called upon, and, in the meantime, to keep the peace, and be of good behaviour:

Provided that, where any first offender is convicted by a Magistrate of the third class, or a Magistrate of the second class not specially empowered by the Local Government in this behalf, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class or Sub-divisional Magistrate, forwarding the accused to, or taking bail or his appearance before, such Magistrate, who shall dispose of the case in manner provided by section 380.

563. (1) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(2) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such

* Act XLV. of 1860.

Court may either remand him in custody until the case is heard, or admit him to bail with a sufficient surety conditioned on his appearing for sentence. Such Court may, after hearing the case, pass sentence.

564. (1) The Court, before directing the release of an offender, shall be satisfied that the offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts, or in which the offender is likely to live during the period named for the observance of the conditions.

(2) Nothing in this section or in sections 562 and 563 shall affect the provisions of section 31 of the Reformatory Schools Act, 1897.*

Previously-convicted Offenders.

565. (1) When any person, having been convicted of any offence punishable under Chapter XII. or Chapter XVII. of the Indian Penal Code† with imprisonment for a term of three years or upwards, is again convicted of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards by a High Court, Court of Session, Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or any Magistrate of the first class specially empowered by the Local Government in this behalf, such Court or Magistrate may, if it or he thinks fit, at the time of passing sentence of transportation or imprisonment on such person, also order that his residence and any change of residence after release be notified, as hereinafter provided for a term not exceeding five years from the date of the expiration of such sentence.

(2) If such conviction is set aside on appeal or otherwise, such order shall become void.

(3) The Local Government, with the previous sanction of the Governor-General in Council, may make rules to carry out the provisions of this section relating to the notification of residence by released convicts.‡

(4) Any person refusing or neglecting to comply with any rule so made shall be punishable as if he had committed an offence under section 176 of the Indian Penal Code.†

* Act VIII. of 1897.

† Act XLV. of 1860.

‡ For instance of rules made under sub-s. (3) of s. 565 in the Bombay Presidency, see *Bombay Government Gazette*, 1900, Pt. I., p. 374; in Burma, see the *Burma Gazette*, 1900, Pt. I., p. 237; in the Central Provinces see the *C. P. Gazette*, 1900, Pt. III., p. 53.

SCHEDULES :

I.—ENACTMENTS REPEALED.

II.—TABULAR STATEMENT OF OFFENCES.

III.—ORDINARY POWERS OF PROVINCIAL MAGISTRATES.

IV.—ADDITIONAL POWERS WITH WHICH PROVINCIAL MAGISTRATES
MAY BE INVESTED.

V.—FORMS.

SCHEDULE 1.:

ENACTMENTS REPEALED.

(See section 2.)

Year.	No.	Short title or subject.	Extent of repeal.
1875 ...	X.	High Court's Criminal Procedure.	The whole.
1882 ...	X.	The Code of Criminal Procedure, 1882.	The whole.
1884 ...	III.	The Criminal Procedure Code Amendment Act, 1884.	The whole.
1886 ...	X.	Amending the Code of Criminal Procedure, 1882, and certain other Acts.	Sections 1 to 19 (both inclusive).
1887 ...	V.	Amending the Code of Criminal Procedure, 1882.	The whole.
„ ...	XIV.	The Indian Marine Act, 1887.	Section 78.
1889 ...	I.	The Metal Tokens Act, 1889.	Section 7.
„ ...	V.	Abolishing the Office of Coroner of Madras.	Section 4, sub-section (1).*
„ ...	XI.†	The Lower Burma Courts Act, 1889.	So much of the second Schedule as relates to the Code of Criminal Procedure, 1882.
„ ...	XIII.	The Cantonments Act, 1889...	So much of the Schedule as relates to the Code of Criminal Procedure, 1882.
1891 ...	III.	Amending the Indian Evidence Act, 1872, and the Code of Criminal Procedure, 1882.	Section 9.

* See also the Repealing and Amending Act (XII. of 1891).

† The whole Act has since been repealed by the Lower Burma Courts Act (VI. of 1900).

SCHEDULE I.—(continued).

ENACTMENTS REPEALED.—(continued).

Year.	No.	Short title or subject.	Extent of repeal.
1891 ...	IV.	Amending the Code of Criminal Procedure, 1882.	The whole.
... ..	X	Amending the Indian Penal Code and the Code of Criminal Procedure, 1882.	Sections 2 and 3.
.. ...	XII.	The Repealing and Amending Act, 1891.	So much as relates to the Code of Criminal Procedure, 1882.
1894 ...	III.	Amending the Code of Criminal Procedure, 1882, and the Indian Penal Code.	Sections 1 to 4 (both inclusive).
.. ...	X.	Amending the Code of Criminal Procedure, 1882.	The whole
1895 ...	IV.	Amending sections 366 and 371 of the Code of Criminal Procedure, 1882.	The whole.
1896 ...	XIII.	Amending the Code of Criminal Procedure, 1882.	The whole.

SCHE

TABULAR STATE

Explanatory Note.—The entries in the second and seventh columns the Indian Penal Code," are not intended as definitions of the offences Indian Penal Code, or even as abstracts of those sections, but merely as the first column.

The third column of this Schedule applies also to the police in the

CHAPTER V.—

1.	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
109	Abetment of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment.	May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.
110	Abetment of any offence, if the person abetted does the act with a different intention from that of the abettor.	Ditto ...	Ditto ...
111	Abetment of any offence, when one act is abetted, and a different act is done; subject to the proviso.	Ditto ...	Ditto ...
113	Abetment of any offence, when an effect is caused by the act abetted different from that intended by the abettor.	Ditto ...	Ditto ...

RULE II.

MENT OF OFFENCES.

of this Schedule, headed respectively, "Offence" and "punishment under and punishments described in the several corresponding sections of the references to the subject of the section, the number of which is given in

towns of Calcutta and Bombay.

ABETMENT.

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
According as the of- fence ab- etted is bailable or not.	According as the of- fence abet- ted is com- poundable or not.	The same punishment as for the offence abetted.	The Court by which the of- fence abetted is triable
Ditto ...	Ditto ...	Ditto	Ditto,
Ditto ...	Ditto ...	The same punishment as for the offence intended to be abetted.	Ditto.
Ditto ...	Ditto ...	The same punishment as for the offence committed.	Ditto.

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
114	Abetment of any offence, if abettor is present when offence is committed.	May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.
115	Abetment of an offence punishable with death or transportation for life if the offence be not committed in consequence of the abetment.	Ditto ...	Ditto ...
	If an act which causes harm be done in consequence of the abetment.	Ditto ...	Ditto ...
116	Abetment of an offence punishable with imprisonment if the offence be not committed in consequence of the abetment.	Ditto ...	Ditto ...
	If the abettor or the person abetted be a public servant whose duty it is to prevent the offence.	Ditto ...	Ditto ...

ABETMENT.—(Continued.)

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
According as the offence abetted is bailable or not	According as the offence abetted is compoundable or not.	The same punishment as for the offence committed.	The Court by which the offence abetted is triable.
Not bailable.	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 14 years and fine.	Ditto.
According as the offence abetted is bailable or not.	Ditto ...	Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.

CHAPTER V.—

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
117	Abetting the commission of an offence by the public, or by more than ten persons.	May arrest without warrant if arrest for the offence abetted may be made without warrant but not otherwise.	According as a warrant or summons may issue for the offence abetted.
118	Concealing a design to commit an offence punishable with death or transportation for life, if the offence be committed.	Ditto ...	Ditto ...
	If the offence be not committed ...	Ditto ...	Ditto ...
119	A public servant concealing a design to commit an offence which it is his duty to prevent, if the offence be committed.	Ditto ...	Ditto ...
	If the offence be punishable with death or transportation for life.	Ditto ...	Ditto ...

ABETMENT.—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
According as the offence abetted is bailable or not	According as the offence abetted is compound- able or not	Imprisonment of either description for 3 years or fine or both.	The Court by which the of- fence abetted is triable
Not bailable	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
According as the offence abetted is bailable or not.	Ditto ...	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
Not bailable	Ditto ...	Imprisonment of either description for 10 years.	Ditto.

1	2	3	4
SECTION.	OFFENCE.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
	If the offence be not committed ...	May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.
120	Concealing a design to commit an offence punishable with imprisonment, if the offence be committed.	Ditto ...	Ditto ...
	If the offence be not committed.	Ditto ...	Ditto ...

ABETMENT.—(*Concluded.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
According as the offence abetted is bailable or not.	According as the offence abetted is compound- able or not	Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	The Court by which the offence abetted is triable.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment extending to one-eighth part of the longest term, and of the description, provided for the offence, or fine or both.	Ditto.

CHAPTER VA.*—CRIMINAL

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not	Whether a warrant or a summons shall ordinarily issue in the first instance.
120B	Criminal conspiracy to commit an offence punishable with death, transportation or rigorous imprisonment for a term of two years or upwards.	May arrest without warrant if arrest for the offence which is the object of the conspiracy may be made without warrant, but not otherwise	According as a warrant or summons may issue for the offence which is the object of the conspiracy
	Any other criminal conspiracy	Shall not arrest without a warrant.	Summons.

CHAPTER VI —OFFENCES

121	Waging or attempting to wage war, or abetting the waging of war, against the Queen.	Shall not arrest without warrant.	Warrant ...
121A	Conspiring to commit certain offences against the State.	Ditto ...	Ditto ...

* Inserted by

CONSPIRACY.

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
According as the offence which is the object of the conspiracy is bailable or not.	Not compoundable.	The same punishment as that provided for the abetment of the offence which is the object of the conspiracy.	Court of sessions when the offence which is the object of the conspiracy is triable exclusively by such Court; in the case of all other offences Court of Session, Presidency Magistrate or Magistrate of the first class.
Bailable.	Ditto ...	Imprisonment * of either description for six months and fine or both.	Presidency Magistrate or Magistrate of the first class.

AGAINST THE STATE.

Not bailable.	Not Compoundable.	Death or transportation for life, and forfeiture of property.	Court of Session.
Ditto ...	Ditto ...	Transportation for life or any shorter term, or imprisonment of either description for 10 years.	Ditto.

CHAPTER VI.—OFFENCES

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
122	Collecting arms, &c., with the intention of waging war against the Queen	Shall not arrest without warrant.	Warrant ...
123	Concealing, with intent to facilitate, a design to wage war.	Ditto ...	Ditto ...
124	Assaulting Governor-General, Governor, &c., with intent to compel or restrain the exercise of any lawful power.	Ditto ...	Ditto ...
124A	Sedition	Ditto ...	Ditto ...
125	Waging war against any Asiatic Power in alliance or at peace with the Queen, or abetting the waging of such war.	Ditto ...	Ditto ...

AGAINST THE STATE—(*Continued*).

5	6	7	8
Whether bailable or not.	Whether compound- able or not	Punishment under the Indian Penal Code.	By what Court triable
Not bailable	Not compoundable	Transportation for life, or imprisonment of either description for 10 years, and forfeiture of property	Court of Session.
Ditto ..	Ditto ..	Imprisonment of either description for 10 years and fine	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine	Ditto.
Ditto ...	Ditto ...	Transportation for life or for any term and fine, or imprisonment of either description for 3 years and fine, or fine.	Court of Session, Chief Presidency Magistrate, or District Magistrate or Magistrate of the first class specially empowered by the Local Government in that behalf.
Ditto ...	Ditto ...	Transportation for life and fine, or imprisonment of either description for 7 years and fine, or fine.	Court of Session.

CHAPTER VI.—OFFENCES

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
26	Committing depredation on the territories of any Power in alliance or at peace with the Queen.	Shall not arrest without warrant.	Warrant ...
27	Receiving property taken by war or depredation mentioned in sections 125 and 126	Ditto ...	Ditto ...
28	Public servant voluntarily allowing prisoner of State or war in his custody to escape.	Ditto ...	Ditto ...
29	Public servant negligently suffering prisoner of State or war in his custody to escape.	Ditto ...	Ditto ...
30	Aiding escape of, rescuing, or harbouring such prisoner, or offering any resistance to the re-capture of such prisoner.	Ditto ...	Ditto ...

CHAPTER VII.—OFFENCES RELATING

131	Abetting mutiny or attempting to seduce an officer, soldier, or sailor from his allegiance or duty.	May arrest without warrant.	Warrant ...
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AGAINST THE STATE (*Concluded*).

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable.	Not com- poundable.	Imprisonment of either description for 7 years and fine, and forfeiture of certain property.	Court of Session.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
Bailable ...	Ditto ...	Simple imprisonment for 3 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Not bailable.	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.

TO THE ARMY AND NAVY.

Not bailable.	Not com- poundable.	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
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CHAPTER VII.—OFFENCES RELATING

1	2	3	4
SECTION	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
132	abetment of mutiny if mutiny is committed in consequence thereof.	May arrest without warrant.	Warrant ...
133	abetment of an assault, by an officer, soldier, or sailor, on his superior officer when in the execution of his office	Ditto ...	Ditto ...
134	abetment of such assault if the assault is committed	Ditto ...	Ditto ...
135	abetment of the desertion of an officer, soldier, or sailor.	Ditto ...	Ditto ...
136	Harbouring such an officer, soldier, or sailor who has deserted.	Ditto ...	Ditto ...
137	Deserter concealed on board merchant-vessel through negligence of master or person in charge thereof.	Shall not arrest without warrant	Summons...
138	abetment of act of insubordination by an officer, soldier, or sailor if the offence be committed in consequence.	May arrest without warrant.	Warrant ...
140	Wearing the dress or carrying any token used by a soldier with intent that it may be believed that he is such a soldier.	Ditto ...	Summons...

TO THE ARMY AND NAVY.—(Continued.)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable.	Not com- poundable.	Death or transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either de- scription for 3 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either de- scription for 7 years and fine.	Court of Session.
Bailable ...	Ditto ...	Imprisonment of either de- scription for 2 years or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Fine of 500 rupees ...	Ditto.
Ditto ..	Ditto ...	Imprisonment of either de- scription for 6 months or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either de- scription for 3 months or fine of 500 rupees, or both.	Any Magistrate.

CHAPTER VIII.—OFFENCES AGAINST

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
143	Being member of an unlawful assembly.	May arrest without warrant.	Summons...
144	Joining an unlawful assembly, armed with any deadly weapon.	Ditto ...	Warrant ...
145	Joining or continuing in an unlawful assembly knowing that it has been commanded to disperse.	Ditto ...	Ditto ...
147	Rioting ...	Ditto ...	Ditto ...
148	Rioting, armed with a deadly weapon ...	Ditto ...	Ditto ...
149	If an offence be committed by any member of an unlawful assembly, every other member of such assembly shall be guilty of the offence.	According as arrest may be made without warrant for the offence or not.	According as a warrant or summons may issue for the offence.

THE PUBLIC TRANQUILLITY.

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Imprisonment of either description for 6 months or fine, or both.	Any Magistrate.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years or fine, or both.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
According as the offence is bailable or not.	Ditto ...	The same as for the of- fence.	The Court by which the of- fence is triable.

CHAPTER VIII.—OFFENCES AGAINST

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
150	Hiring, engaging or employing persons to take part in an unlawful assembly.	May arrest without warrant.	According to the offence committed by the person hired, engaged, or employed
151	Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse	Ditto ...	Summons...
152	Assaulting or obstructing public servant when suppressing riot, etc	Ditto ...	Warrant ...
153	Wantonly giving provocation with intent to cause riot, if rioting be committed.	Ditto ...	Ditto ...
	If not committed ...	Ditto ...	Summons...
	Promoting enmity between classes ...	Shall not arrest without warrant.	Warrant ...
154	Owner or occupier of land not giving information of riot, &c.	Ditto ...	Summons...

THE PUBLIC TRANQUILLITY.—(*Continued.*)

5	6	7	8
Whether bailable or not	Whether compoundable or not	Punishment under the Indian Penal Code	By what Court triable.
According as the offence is bailable or not.	Not compoundable.	The same as for a member of such assembly, and for any offence committed by any member of such assembly.	The Court by which the offence is triable.
Bailable ...	Ditto ...	Imprisonment of either description for 6 months or fine, or both.	Any Magistrate
Ditto ...	Ditto ...	Imprisonment of either description for 3 years or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class
Ditto ...	Ditto ...	Imprisonment of either description for 1 year or fine, or both.	Any Magistrate.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months or fine, or both.	Ditto.
Not bailable	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Presidency Magistrate or Magistrate of the first class
Bailable ...	Ditto ...	Fine of 1,000 rupees ...	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER VIII.—OFFENCES AGAINST

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
155	Person for whose benefit or on whose behalf a riot takes place not using all lawful means to prevent it.	Shall not arrest without warrant.	Summons...
156	Agent of owner or occupier for whose benefit a riot is committed not using all lawful means to prevent it.	Ditto ...	Ditto ...
157	Harbouring persons hired for an unlawful assembly.	May arrest without warrant.	Ditto ...
158	Being hired to take part in an unlawful assembly or riot.	Ditto ...	Ditto ...
159	Or to go armed ...	Ditto ...	Warrant ...
160	Committing affray ...	Shall not arrest without warrant.	Summons...

CHAPTER IX.—OFFENCES BY OR

161	Being or expecting to be a public servant, and taking a gratification, other than legal remuneration, in respect of an official act.	Shall not arrest without warrant.	Summons...
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THE PUBLIC TRANQUILLITY.—(*Concluded.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Fine ...	Presidency Magis- trate or Magis- trate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months or fine, or both.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 1 month or fine of 100 rupees, or both.	Any Magistrate.

RELATING TO PUBLIC SERVANTS.

Bailable ...	Not com- poundable.	Imprisonment of either description for 3 years or fine, or both,	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
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CHAPTER IX.—OFFENCES BY OR RELAT-

SECTION	1	2	3	4
		OFFENCE.	Whether the police may arrest without warrant or not	Whether a warrant or a summons shall ordinarily issue in the first instance.
162		Taking a gratification in order, by corrupt or illegal means, to influence a public servant.	Shall not arrest without warrant.	Summons...
163		Taking a gratification for the exercise of personal influence with a public servant.	Ditto ...	Ditto ...
164		Aberrant by public servant of the offences defined in the last two preceding clauses with reference to himself.	Ditto ...	Ditto ...
165		Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant.	Ditto ...	Ditto ...
166		Public servant disobeying a direction of the law with intent to cause injury to any person.	Ditto ...	Ditto ...
167		Public servant framing an incorrect document with intent to cause injury.	Ditto ...	Ditto ...

ING TO PUBLIC SERVANTS.—(*Continued.*)

5	6	7	8
Whether bailable or not	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable
Bailable ...	Not com- poundable.	Imprisonment of either description for 3 years or fine, or both.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Simple imprisonment for 1 year or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years or fine, or both.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Simple imprisonment for 2 years or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second- class.
Ditto ...	Ditto ...	Simple imprisonment for 1 year or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years or fine, or both.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.

CHAPTER IX.—OFFENCES BY OR RELAT-

1	2	3	4
SECTION	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
168	Public servant unlawfully engaging in trade.	Shall not arrest without warrant.	Summons...
169	Public servant unlawfully buying or bidding for property.	Ditto ...	Ditto ...
170	Personating a public servant ...	May arrest without warrant.	Warrant ...
171	Wearing garb or carrying token used by public servant with fraudulent intent.	Ditto ...	Summons...

CHAPTER X.—CONTEMPTS OF THE LAWFUL

172	Absconding to avoid service of summons or other proceeding from a public servant.	Shall not arrest without warrant.	Summons...
	If summons or notice require attendance in person, &c., in a Court of Justice.	Ditto ...	Ditto ...

ING TO PUBLIC SERVANTS.—(*Concluded.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Simple imprisonment for 1 year or fine, or both.	Presidency Mag- istrate or Mag- istrate of the first class.
Ditto ...	Ditto ...	Simple imprisonment for 2 years or fine, or both, and confiscation of pro- perty if purchased.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Any Magistrate.
Ditto ...	Ditto ...	Imprisonment of either description for 3 months or fine of 200 rupees, or both.	Ditto.

AUTHORITY OF PUBLIC SERVANTS.

Bailable ...	Not com- poundable.	Simple imprisonment for 1 month or fine of 500 rupees, or both.	Any Magistrate.
Ditto ...	Ditto ...	Simple imprisonment for 6 months or fine of 1,000 rupees, or both.	Ditto.

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHOR-

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
173	Preventing the service or the affixing of any summons or notice, or the removal of it when it has been affixed, or preventing a proclamation.	Shall not arrest without warrant.	Summons...
	If summons, &c., require attendance in person, &c., in a Court of Justice.	Ditto ...	Ditto ...
174	Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority.	Ditto ...	Ditto ...
	If the order require personal attendance, &c., in a Court of Justice.	Ditto ...	Ditto ...
175	Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document.	Ditto ...	Ditto ...

ITY OF PUBLIC SERVANTS.—(Continued.)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Simple imprisonment for 1 month or fine of 500 rupees, or both	Presidency Ma- gistrate or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Simple imprisonment for 6 months or fine of 1,000 rupees, or both.	Ditto.
Ditto ..	Ditto ...	Simple imprisonment for 1 month or fine of 500 rupees, or both.	Any Magistrate.
Ditto ...	Ditto ...	Simple imprisonment for 6 months or fine of 1,000 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Simple imprisonment for 1 month or fine of 500 rupees, or both.	The Court in which the offence is committed, subject to the pro- visions of Chap- ter XXXV., or, if not committed in a Court, a Presidency Ma- gistrate or Magis- trate of the first or second class.

CHAPTER X.—CONTEMPTS OF THE LAWFUL

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
175- <i>et seq.</i>	If the document is required to be produced in or delivered to a Court of Justice.	Shall not arrest without warrant.	Summons...
176	Intentionally omitting to give notice or information to a public servant by a person legally bound to give such notice or information.	Ditto ...	Ditto ...
	If the notice or information required respects the commission of an offence, &c.	Ditto ...	Ditto ...
177	Knowingly furnishing false information to a public servant.	Ditto ...	Ditto ...
	If the information required respects the commission of an offence, &c.	Ditto ...	Ditto ...

AUTHORITY OF PUBLIC SERVANTS.—(Continued.)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Simple imprisonment for 6 months or fine of 1,000 rupees, or both.	The Court in which the offence is committed, subject to the pro- visions of Chap- ter XXXV.; or, if not committed in a Court, a Presidency Ma- gistrate or Magis- trate of the first or second class.
Ditto ...	Ditto ...	Simple imprisonment for 1 month or fine of 500 rupees, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Simple imprisonment for 6 months or fine of 1,000 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Ditto.

CHAPTER X.—CONTENTS OF THE LAWFUL

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
178	Refusing oath when duly required to take oath by a public servant.	Shall not arrest without warrant.	Summons...
179	Being legally bound to state truth, and refusing to answer questions.	Ditto ...	Ditto ...
180	Refusing to sign a statement made to a public servant when legally required to do so.	Ditto ...	Ditto ...
181	Knowingly stating to a public servant on oath as true that which is false.	Ditto ...	Warrant ...
182	Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person.	Ditto ...	Summons...

AUTHORITY OF PUBLIC SERVANTS.—(Continued.)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Simple imprisonment for 6 months or fine of 1,000 rupees, or both.	The Court in which the of- fence is commit- ted, subject to the provisions of Chapter XXXV. ; or, if not committed in a Court a Presidency Ma- gistrate or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Simple imprisonment for 3 months or fine of 500 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months or fine of 1,000 rupees, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.

CHAPTER X.—CONTEMPTS OF THE LAWFUL

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
183	Resistance to the taking of property by the lawful authority of a public servant.	Shall not arrest without warrant.	Summons ...
184	Obstructing sale of property offered for sale by authority of a public servant.	Ditto ...	Ditto ...
185	Bidding, by a person under a legal incapacity to purchase it, for property at a lawfully authorized sale, or bidding without intending to perform the obligations incurred thereby.	Ditto ...	Ditto ...
186	Obstructing public servant in discharge of his public functions.	Ditto ...	Ditto ...
187	Omission to assist public servant when bound by law to give such assistance.	Ditto ...	Ditto ...
..	Wilfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences, &c.	Ditto ...	Ditto ...

AUTHORITY OF PUBLIC SERVANTS.—(Continued.)

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not compoundable.	Imprisonment of either description for 6 months or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 1 month or fine of 500 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 1 month or fine of 200 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 months or fine of 500 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Simple imprisonment for 1 month or fine of 200 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Simple imprisonment for 6 months or fine of 500 rupees, or both.	Ditto.

CHAPTER X.—CONTEMPTS OF THE LAWFUL

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
188	Disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction, annoyance or injury to persons lawfully employed.	Shall not arrest without warrant.	Summons...
	If such disobedience causes danger to human life, health, or safety, &c.	Ditto ...	Ditto ...
189	Threatening a public servant with injury to him, or one in whom he is interested, to induce him to do or forbear to do any official act.	Ditto ...	Ditto ...
190	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Ditto ...	Ditto ...

CHAPTER XI.—FALSE EVIDENCE AND

193	Giving or fabricating false evidence in a judicial proceeding.	Shall not arrest without warrant.	Warrant ...
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AUTHORITY OF PUBLIC SERVANTS.—(*Concluded.*)

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not compoundable.	Simple imprisonment for 1 month or fine of 200 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months or fine of 1,000 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 1 year or fine, or both.	Ditto.

OFFENCES AGAINST PUBLIC JUSTICE.

Bailable ...	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
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CHAPTER XI.—FALSE EVIDENCE AND

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
	Giving or fabricating false evidence in any other case.	Shall not arrest without warrant.	Warrant ...
194	Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence.	Ditto ...	Ditto ...
	If innocent person be thereby convicted and executed.	Ditto ...	Ditto ...
195	Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation for life or with imprisonment for seven years or upwards.	Ditto ...	Ditto ...
196	Using in a judicial proceeding evidence known to be false or fabricated.	Ditto ...	Ditto ...
197	Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence.	Ditto ...	Ditto ...

OFFENCES AGAINST PUBLIC JUSTICE.—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	imprisonment of either description for 3 years and fine.	Court of Ses- sion, Presidency Magistrate, or Magistrate of the first class.
Not bail- able.	Ditto ...	Transportation for life or rigorous imprisonment for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Death, or as above ...	Ditto.
Bailable ...	Ditto ...	The same as for the of- fence.	Ditto.
According as the of- fence of giving such evi- dence is bailable or not.	Ditto ...	The same as for giving or fabricating false evidence.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Bailable ...	Ditto ...	The same as for giving false evidence.	Ditto.

CHAPTER XI.—FALSE EVIDENCE AND OF-

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
198	Using as a true certificate one known to be false in a material point.	Shall not arrest without warrant.	Warrant ...
199	False statement made in any declaration which is by law receivable as evidence	Ditto ...	Ditto ...
200	Using as true any such declaration known to be false.	Ditto ...	Ditto ...
201	Causing disappearance of evidence of an offence committed, or giving false information touching it to screen the offender, if a capital offence.	Ditto ...	Ditto ...
	If punishable with transportation for life or imprisonment for 10 years.	Ditto ...	Ditto ...
	If punishable with less than 10 years' imprisonment.	Ditto ...	Ditto ...
202	Intentional omission to give information of an offence by a person legally bound to inform.	Ditto ...	Summons ...

FENCES AGAINST PUBLIC JUSTICE.—(Continued.)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	The same as for giving false evidence.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Ditto ...	Ditto
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment for a quar- ter of the longest term, and of the description provided for the offence, or fine, or both.	Presidency Magis- trate, or Magis- trate of the first class, or Court by which the of- fence is triable.
Ditto ...	Ditto ...	Imprisonment of either description for 6 month or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.

CHAPTER XI.—FALSE EVIDENCE AND OF-

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
203	Giving false information respecting an offence committed.	Shall not arrest without warrant.	Warrant ...
204	Secreting or destroying any document to prevent its production as evidence.	Ditto ...	Ditto ...
205	False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security.	Ditto ...	Ditto ...
200	Fraudulent removal or concealment &c., of property to prevent its seizure as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto ...	Ditto ...
207	Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto ...	Ditto ...

FENCES AGAINST PUBLIC JUSTICE.—(Continued.)

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not compoundable.	Imprisonment of either description for 2 years or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years or fine, or both.	Court of Session Presidency Magistrate, or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Ditto.

CHAPTER XI.—FALSE EVIDENCE AND OF-

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
208	Fraudulently suffering a decree to pass for a sum not due, or suffering decree to be executed after it has been satisfied.	Shall not arrest without warrant	Warrant ...
209	False claim in a Court of Justice ...	Ditto ...	Ditto ...
210	Fraudulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied.	Ditto ...	Ditto ...
211	False charge of offence made with intent to injure.	Ditto ...	Ditto ...
	If offence charged be punishable with imprisonment for seven years or upwards.	Ditto ...	Ditto ...
	If offence charged be capital, or punishable with transportation for life.	Ditto ...	Ditto ...
212	Harbouring an offender, if the offence be capital.	May arrest without warrant.	Ditto ...
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto ...	Ditto ...

FENCES AGAINST PUBLIC JUSTICE.—(Continued.)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Imprisonment of either description for 2 years or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Ditto
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Ditto ...	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.

CHAPTER XI.—FALSE EVIDENCE AND OF-

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
212- <i>ctd.</i>	If punishable with imprisonment for 1 year, and not for 10 years.	May arrest without warrant.	Warrant ...
213	Taking gift, &c., to screen an offender from punishment, if the offence be capital.	Shall not arrest without warrant.	Ditto ...
	If punishable with transportation for life or with imprisonment for 10 years.	Ditto ...	Ditto ...
	If with imprisonment for less than 10 years.	Ditto ...	Ditto ...
214	Offering gift or restoration of property in consideration of screening offender, if the offence be capital.	Ditto ...	Ditto ...
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto ...	Ditto ...

FENCES AGAINST PUBLIC JUSTICE.—(Continued.)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Imprisonment for a quar- ter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first class, or Court by which the offence is triable.
Ditto ...	Ditto ...	Imprisonment of either de- scription for 7 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment for a quarter of the longest term, and of the description, pro- vided for the offence, or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first class, or Court by which the offence is triable.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.

CHAPTER XI.—FALSE EVIDENCE AND OF-

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
	If with imprisonment for less than 10 years.	Shall not arrest without warrant.	Warrant ...
215	Taking gift to help to recover moveable property of which a person has been deprived by an offence, without causing apprehension of offender.	Ditto ...	Ditto ...
216	Harbouring an offender who has escaped from custody or whose apprehension has been ordered, if the offence be capital.	May arrest without warrant.	Ditto ...
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto ...	Ditto ...
	If with imprisonment for 1 year, and not for 10 years.	Ditto ...	Ditto ...
216A	Harbouring robbers or dacoits ...	Ditto ...	Ditto ...

FENCES AGAINST PUBLIC JUSTICE.—(Continued.)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Imprisonment for a quar- ter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first class, or Court by which the offence is triable.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, with or without fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment for a quar- ter of the longest term, and of the description, provided for the offence or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first class, or Court by which the offence is triable.
Ditto ...	Ditto ...	Rigorous imprisonment for 7 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.

CHAPTER XL.—FALSE EVIDENCE AND OF-

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
217	Public servant disobeying a direction of law with intent to save person from punishment, or property from forfeiture.	Shall not arrest without warrant.	Summons...
218	Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture.	Ditto ...	Warrant ...
219	Public servant in a judicial proceeding corruptly making and pronouncing an order, report, verdict, or decision which he knows to be contrary to law.	Ditto ...	Ditto ...
220	Commitment for trial or confinement by a person having authority, who knows that he is acting contrary to law.	Ditto ...	Ditto ...
221	Intentional omission to apprehend on the part of a public servant bound by law to apprehend an offender, if the offence be capital.	Ditto ...	Ditto ...
-	If punishable with transportation for life or imprisonment for 10 years.	Ditto ...	Ditto ...

OFFENCES AGAINST PUBLIC JUSTICE.—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Imprisonment of either description for 2 years or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years or fine, or both.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years or fine, or both.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either de- scription for 7 years, with or without fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, with or without fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.

CHAPTER XI.—FALSE EVIDENCE AND OF-

SECTION.	1	2	3	4
		OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
221- ctd.		If with imprisonment for less than 10 years.	Shall not arrest without warrant.	Warrant ...
222		intentional omission to apprehend on the part of a public servant bound by law to apprehend person under sentence of a Court of Justice, if under sentence of death.	Ditto ...	Ditto ...
		If under sentence of transportation or penal servitude for life, or transportation, imprisonment, or penal servitude for 10 years or upwards.	Ditto ...	Ditto ...
		If under sentence of imprisonment for less than 10 years, or lawfully committed to custody.	Ditto ...	Ditto ...
223		Escape from confinement negligently suffered by a public servant.	Ditto ...	Summons...
224		Resistance or obstruction by a person to his lawful apprehension.	May arrest without warrant.	Warrant ...
225		Resistance or obstruction to the lawful apprehension of another person, or rescuing him from lawful custody.	Ditto ...	Ditto ...

FENCES AGAINST PUBLIC JUSTICE.—(Continued.)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Imprisonment of either description for 2 years, with or without fine.	Presidency Magis- trate or Magis- trate of the first or second class.
Not bailable	Ditto ...	Transportation for life or imprisonment of either description for 14 years, with or without fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years, with or without fine.	Ditto.
Bailable ...	Ditto ...	Imprisonment of either description for 3 years or fine, or both.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Simple imprisonment for 2 years or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.

CHAPTER XI.—FALSE EVIDENCE AND OF-

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
225- cid.	If charged with an offence punishable with transportation for life or imprisonment for 10 years.	May arrest without warrant.	Warrant ...
	If charged with a capital offence ...	Ditto ...	Ditto ...
	If the person is sentenced to transportation for life, or to transportation, penal servitude, or imprisonment for 10 years or upwards.	Ditto ...	Ditto ...
	If under sentence of death ...	Ditto ...	Ditto ...
225A	Omission to apprehend, or sufferance of escape, on part of public servant, in cases not otherwise provided for—		
	(a) in case of intentional omission or sufferance;	Shall not arrest without warrant	Ditto ...
	(b) in case of negligent omission or sufferance;	Ditto ...	Summons...

FENCES AGAINST PUBLIC JUSTICE.—(Continued.)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable.	Not com- poundable.	Imprisonment of either de- scription for 3 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either de- scription for 7 years and fine.	Court of Session.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Transportation for life or imprisonment of either description for 10 years and fine.	Ditto.
Bailable ...	Ditto ...	Imprisonment of either de- scription for 3 years or fine, or both.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Simple imprisonment for 2 years or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.

CHAPTER XI.—FALSE EVIDENCE AND OF-

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
225B	Resistance or obstruction to lawful apprehension, or escape or rescue, in cases not otherwise provided for.	May arrest without warrant.	Warrant ...
226	Unlawful return from transportation ...	Ditto ...	Ditto ...
227	Violation of condition of remission of punishment.	Shall not arrest without warrant.	Summons...
228	Intentional insult or interruption to a public servant sitting in any stage of a Judicial proceeding.	Ditto ...	Ditto ...
229	Personation of a juror or assessor ...	Ditto ...	Ditto ...

CHAPTER XII.—OFFENCES RELATING TO

231	Counterfeiting, or performing any part of the process of counterfeiting, coin.	May arrest without warrant.	Warrant ...
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FENCES AGAINST PUBLIC JUSTICE.—(*Concluded*).

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Imprisonment of either de- scription for 6 months or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class
Not bailable	Ditto ...	Transportation for life and fine and rigorous imprisonment for 3 years before transportation.	Court of Session.
Ditto ...	Ditto ...	Punishment of original sentence, or, if part of the punishment has been undergone, the residue.	The Court by which the origi- nal offence was triable.
Bailable ...	Ditto ...	Simple imprisonment for 6 months or fine of 1 000 rupees, or both.	The Court in which the of- fence is commit- ted, subject to the provisions of Chapter XXXV.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first class.

COIN AND GOVERNMENT STAMPS.

Not bailable.	Not com- poundable.	Imprisonment of either description for 7 years and fine.	Court of Session.
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CHAPTER XII.—OFFENCES RELATING TO

SECTION.	OFFENCE. *	3	4
		Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
232	Counterfeiting, or performing any part of the process of counterfeiting, the Queen's coin.	May arrest without warrant.	Warrant ...
233	Making, buying, or selling instrument for the purpose of counterfeiting coin.	Ditto ...	Ditto ...
234	Making, buying, or selling instrument for the purpose of counterfeiting the Queen's coin.	Ditto ...	Ditto ...
235	Possession of instrument or material for the purpose of using the same for counterfeiting coin.	Ditto ...	Ditto ...
	If Queen's coin ...	Ditto ...	Ditto ...
236	Abetting in British India the counterfeiting out of British India of coin.	Ditto ...	Ditto ...
237	Import or export of counterfeit coin, knowing the same to be counterfeit.	Ditto ...	Ditto ...

SCH. II.—STATEMENT OF OFFENCES.

COIN AND GOVERNMENT STAMPS.—(Continued.)

5	6	7	8
Whether bailable or not.	Whether compoundable or not	Punishment under the Indian Penal Code.	By what Court triable
Not bailable	Not compoundable	Transportation for life or imprisonment of either description for 10 years and fine.	Court of Session.
Ditto ..	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	The punishment provided for abetting the counterfeiting of such coin within British India.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.

CHAPTER XII.—OFFENCES RELATING TO

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance
238	Import or export of counterfeits of the Queen's coin, knowing the same to be counterfeit.	May arrest without warrant.	Warrant ...
239	Having any counterfeit coin known to be such when it came into possession and delivering, &c., the same to any person.	Ditto ...	Ditto ...
240	The same with respect to the Queen's coin	Ditto ...	Ditto ..
241	Knowingly delivering to another any counterfeit coin as genuine which, when first possessed, the deliverer did not know to be counterfeit.	Ditto ...	Ditto ...
242	Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto ...	Ditto ...
243	Possession of Queen's coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto ...	Ditto ...

COIN AND GOVERNMENT STAMPS.—(Continued.)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable.	Not com- poundable.	Transportation for life or imprisonment of either description for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine of ten times the value of the coin counter- feited, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.

CHAPTER XII.—OFFENCES RELATING TO

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
244	Person employed in a Mint causing coin to be of a different weight or composition from that fixed by law.	May arrest without warrant.	Warrant ...
245	Unlawfully taking from a Mint any coining instrument.	Ditto ...	Ditto ...
246	Fraudulently diminishing the weight or altering the composition of any coin.	Ditto ...	Ditto ...
247	Fraudulently diminishing the weight or altering the composition of the Queen's coin.	Ditto ...	Ditto ...
248	Altering appearance of any coin with intent that it shall pass as a coin of a different description.	Ditto ...	Ditto ...
249	Altering appearance of the Queen's coin with intent that it shall pass as a coin of a different description.	Ditto ...	Ditto ...
250	Delivery to another of coin possessed with the knowledge that it is altered	Ditto ...	Ditto ...
251	Delivery of Queen's coin possessed with the knowledge that it is altered.	Ditto ...	Ditto ...

COIN AND GOVERNMENT STAMPS.—(Continued.)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable.	Not com- poundable.	Imprisonment of either description for 7 years and fine.	Court of Session.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.

CHAPTER XII.—OFFENCES RELATING TO

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
252	Possession of altered coin by a person who knew it to be altered when he became possessed thereof.	May arrest without warrant.	Warrant ...
253	Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof.	Ditto ...	Ditto ...
254	Delivery to another of coin as genuine which, when first possessed, the deliverer did not know to be altered.	Ditto ...	Ditto ...
255	Counterfeiting a Government stamp ...	Ditto ...	Ditto ...
256	Having possession of an instrument or material for the purpose of counterfeiting a Government stamp.	Ditto ...	Ditto ...
257	Making, buying, or selling instrument for the purpose of counterfeiting a Government stamp.	Ditto ...	Ditto ...
258	Sale of counterfeit Government stamp...	Ditto ...	Ditto ...

COIN AND GOVERNMENT STAMPS.—(Concluded.)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not Bailable.	Not compoundable.	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto
Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine of ten times the value of the coin.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.
Bailable ...	Ditto ...	Transportation for life or Imprisonment of either description for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.

CHAPTER XII.—OFFENCES RELATING TO

1	2	3	4
SECTION.	OFFENCE	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
259	Having possession of a counterfeit Government stamp.	May arrest without warrant	Warrant ...
260	Using as genuine a Government stamp known to be counterfeit.	Ditto ...	Ditto ...
261	Effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp used for it with intent to cause loss to Government.	Ditto ...	Ditto ..
262	Using a Government stamp known to have been before used.	Ditto ...	Ditto ...
263	Erasure of mark denoting that stamp has been used.	Ditto ...	Ditto ...
263A	Fictitious stamps ...	Ditto ...	Ditto ...

COIN AND GOVERNMENT STAMPS.—(Continued.)

5.	6.	7.	8.
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years or fine, or both.	Court of Session, Presidency Ma- gistrate or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Fine of 200 rupees ...	Presidency Ma- gistrate or Ma- gistrate of the first class.

CHAPTER XIII.—OFFENCES RELATING TO

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
264	Fraudulent use of false instrument for weighing.	Shall not arrest without warrant.	Summons...
265	Fraudulent use of false weight or measure.	Ditto ...	Ditto ...
266	Being in possession of false weights or measures for fraudulent use.	Ditto ...	Ditto ...
267	Making or selling false weights or measures for fraudulent use.	Ditto ...	Ditto ...

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH

269	Negligently doing any act known to be likely to spread infection of any disease dangerous to life.	May arrest without warrant.	Summons ...
270	Malignantly doing any act known to be likely to spread infection of any disease dangerous to life.	Ditto ...	Ditto ...
271	Knowingly disobeying any quarantine rule.	Shall not arrest without warrant	Ditto ...
272	Adulterating food or drink intended for sale so as to make the same noxious.	Ditto ...	Ditto ...

WEIGHTS AND MEASURES.

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Imprisonment of either description for 1 year or fine, or both.	Presidency Magis- trate or Magis- trate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.

SAFETY, CONVENIENCE DECENCY, AND MORALS.

Bailable ...	Not com- poundable.	Imprisonment of either description for 6 months or fine, or both.	Presidency Magis- trate or Magis- trate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months or fine of 1,000 rupees, or both.	Ditto.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH.

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not	Whether a warrant or a summons shall ordinarily issue in the first instance.
273	Selling any food or drink as food and drink knowing the same to be noxious.	Shall not arrest without warrant.	Summons ...
274	Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious.	Ditto ...	Ditto ...
275	Offering for sale or issuing from a dispensary any drug or medical preparation known to have been adulterated.	Ditto ...	Ditto ...
276	Knowingly selling or issuing from a dispensary any drug or medical preparation as a different drug or medical preparation.	Ditto ...	Ditto ...
277	Defiling the water of a public spring or reservoir.	May arrest without warrant.	Ditto ...
278	Making atmosphere noxious to health ...	Shall not arrest without warrant.	Ditto ...
279	Driving or riding on a public way so rashly or negligently as to endanger human life, &c.	May arrest without warrant.	Ditto ...

SAFETY, CONVENIENCE, DECENCY, AND MORALS.—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Imprisonment of either description for 6 months or fine of 1,000 rupees, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 months or fine of 500 rupees, or both.	Any Magistrate.
Ditto ...	Ditto ...	Fine of 500 rupees ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either descriptton for 6 months or fine of 1,000 rupees, or both.	Ditto.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH,

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
280	Navigating any vessel so rashly or negligently as to endanger human life, &c.	May arrest without warrant.	Summons ...
281	Exhibition of a false light, mark, or buoy.	Ditto ...	Warrant ...
282	Conveying for hire any person by water in a vessel in such a state, or so loaded, as to endanger his life.	Ditto ..	Summons ...
283	Causing danger, obstruction, or injury in any public way or line of navigation.	Ditto ...	Ditto ...
284	Dealing with any poisonous substance so as to endanger human life, &c.	Shall not arrest without warrant.	Ditto ...
285	Dealing with fire or any combustible matter so as to endanger human life, &c.	May arrest without warrant.	Ditto ...
286	So dealing with any explosive substance.	Ditto ...	Ditto ...
287	So dealing with any machinery ...	Shall not arrest without warrant.	Ditto ...

SAFETY, CONVENIENCE, DECENCY, AND MORALS.—(Continued.)

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not compoundable.	Imprisonment of either description for 6 months or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years or fine, or both.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ..	Fine of 200 rupees ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months or fine of 1,000 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Any Magistrate.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Ditto ...	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH,

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily be issued in the first instance.
288	A person omitting to guard against probable danger to human life by the fall of any building over which he has a right entitling him to pull it down or repair it.	Shall not arrest without warrant	Summons...
289	A person omitting to take order with any animal in his possession, so as to guard against danger to human life or of grievous hurt, from such animal.	May arrest without warrant.	Ditto ..
290	Committing a public nuisance ...	Shall not arrest without warrant.	Ditto ...
291	Continuance of nuisance after injunction to discontinue.	May arrest without warrant	Ditto ...
292	Sale, &c., of obscene books, &c. ...	Ditto ...	Warrant ...
293	Having in possession obscene books, &c., for sale or exhibition.	Ditto ...	Ditto ...
294	Obscene songs.	Ditto ...	Ditto ...

SAFETY, CONVENIENCE, DECENCY, AND MORALS.—(Continued.)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable	imprisonment of either description for 6 months or fine of 1,000 rupees, or both.	Presidency Magis- trate or Magis- trate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Any Magistrate.
Ditto ...	Ditto ...	Fine of 200 rupees ...	Ditto
Ditto ..	Ditto ...	Simple imprisonment for 6 months or fine or both.	Presidency Magis- trate or Magis- trate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 months or fine, or both.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH,

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
294A	Keeping a lottery office ...	Shall not arrest without warrant.	Summons...
	Publishing proposals relating to lotteries.	Ditto ...	Ditto ...

CHAPTER XV.—OFFENCES

295	Destroying, damaging, or defiling a place of worship or sacred object with intent to insult the religion of any class of persons.	May arrest without warrant.	Summons ...
296	Causing a disturbance to an assembly engaged in religious worship.	Ditto ...	Ditto ...
297	Trespassing in place of worship or sepulture, disturbing funeral, with intention to wound the feelings, or to insult the religion, of any person, or offering indignity to a human corpse.	Ditto ...	Ditto ...
298	Uttering any word or making any sound in the hearing, or making any gesture, or placing any object, in the sight, of any person, with intention to wound his religious feeling.	Shall not arrest without warrant.	Ditto ...

SAFETY, CONVENIENCE, DECENCY, AND MORALS.—(*Concluded.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable	Imprisonment of either description for 6 months or fine, or both.	Any Magistrate.
Ditto ...	Ditto ...	Fine of 1,000 rupees ...	Ditto.

RELATING TO RELIGION.

Bailable ...	Not com- poundable.	Imprisonment of either description for 2 years or fine, or both.	Presidency Ma- gistrate, or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 1 year or fine, or both.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Compound- able.	Ditto ...	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING

Of Offences

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance
302	Murder ...	May arrest without warrant.	Warrant ...
303	Murder by a person under sentence of transportation for life.	Ditto ...	Ditto ...
304	Culpable homicide not amounting to murder if act by which the death is caused is done with intention of causing death, &c.	Ditto ...	Ditto ...
	It act is done with knowledge that it is likely to cause death, but without any intention to cause death, &c.	Ditto ...	Ditto ...
304A	Causing death by rash or negligent act...	Ditto ...	Ditto ...
305	Abetment of suicide committed by a child or insane or delirious person, or an idiot, or a person intoxicated.	Ditto ...	Ditto ...
306	Abetting the commission of suicide ...	Ditto ...	Ditto ...

THE HUMAN BODY.

affecting Life.

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable.	Not com- poundable.	Death or transportation for life and fine.	Court of Session.
Ditto ...	Ditto ...	Death ...	Ditto.
Ditto ...	Ditto ...	Transportation for life or imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either de- scription for 10 years or fine, or both.	Ditto.
Bailable ...	Ditto ...	Imprisonment of either de- scription for 2 years or fine, or both.	Court of Session. Presidency Ma- gistrate, or Ma- gistrate of the first class.
Not bailable	Ditto ...	Death or transportation for life or imprisonment for 10 years and fine.	Court of Session
Ditto ...	Ditto ...	Imprisonment of either de- scription for 10 years and fine.	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING

Of Offences affecting

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
307	Attempt to murder ...	May arrest without warrant.	Warrant ...
	If such act cause hurt to any person ...	Ditto ...	Ditto ...
308	Attempt by life-convict to murder, if hurt is caused.	Ditto ...	Ditto ...
	Attempt to commit culpable homicide...	Ditto ...	Ditto ...
	It such act cause hurt to any person ...	Ditto ...	Ditto ...
309	Attempt to commit suicide ...	Ditto ...	Ditto ...
311	Being a thug ...	Ditto ...	Ditto ...

Of the Causing of Miscarriage; of Injuries to Unborn Children;

312	Causing miscarriage ...	Shall not arrest without warrant.	Warrant ...
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THE HUMAN BODY.—(*Continued.*)*Life.*—(Continued.)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable.	Not com- poundable.	Imprisonment of either description for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Transportation for life or as above.	Ditto.
Ditto ...	Ditto ...	Death or as above ...	Ditto.
Bailable ...	Ditto ...	Imprisonment of either description for 3 years or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years or fine, or both.	Ditto.
Ditto ...	Ditto ...	Simple imprisonment for 1 year or fine, or both.	Presidency Magis- trate or Magis- trate of the first or second class.
Not bailable.	Ditto ...	Transportation for life and fine.	Court of Session.

of the Exposure of Infants ; and of the Concealment of Births.

Bailable ...	Not com- poundable.	Imprisonment of either description for 3 years or fine, or both.	Court of Session.
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CHAPTER XVI.—OFFENCES AFFECTING

Of the Causing of Miscarriage; of Injuries to Unborn Children;

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
312- <i>ctd.</i>	If the woman be quick with child ...	Shall not arrest without warrant.	Warrant ...
313	Causing miscarriage without woman's consent.	Ditto ...	Ditto ...
314	Death caused by an act done with intent to cause miscarriage.	Ditto ...	Ditto ...
	If act done without woman's consent ...	Ditto ...	Ditto ...
315	Act done with intent to prevent a child being born alive, or to cause it to die after its birth.	Ditto ...	Ditto ...
316	Causing death of a quick unborn child by an act amounting to culpable homicide.	Ditto ...	Ditto ...
317	Exposure of a child under 12 years of age by parent or person having care of it with intention of wholly abandoning it.	May arrest without warrant.	Ditto ...

THE HUMAN BODY.—(Continued.)

of the Exposure of Infants; and of the Concealment of Births.—(Contd.)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Imprisonment of either description for 7 years and fine.	Court of Session.
Not bailable	Ditto ...	Transportation for life or imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Transportation for life or as above.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Bailable ...	Ditto ...	Imprisonment of either description for 7 years or fine, or both.	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING

Of Concealment

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
318	Concealment of birth by secret disposal of dead body.	May arrest without warrant.	Warrant ...

Of

323	Voluntarily causing hurt ...	Shall not arrest without warrant.	Summons...
324	Voluntarily causing hurt by dangerous weapons or means.	May arrest without warrant.	Ditto ...
325	Voluntarily causing grievous hurt ...	Ditto ...	Ditto ...

THE HUMAN BODY.—(*Continued.*)*of Births.*—(Concluded.)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Imprisonment of either description for 2 years or fine, or both.	Court of Session, Presidency Ma- gistrate or Ma- gistrate of the first or second class.

Hurt.

Bailable ...	Compound- able.	Imprisonment of either description for 1 year or fine of 1,000 rupees, or both.	Any Magistrate.
Ditto ...	Compound- able when permission is given by the Court before which a prosecution is pending.	Imprisonment of either description for 3 years or fine, or both.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING

Of Hurt.—

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
326	Voluntarily causing grievous hurt by dangerous weapons or means.	May arrest without warrant.	Summons...
327	Voluntarily causing hurt to extort property or a valuable security, or to constrain to do anything which is illegal, or which may facilitate the commission of an offence.	Ditto ...	Warrant ...
328	Administering stupefying drug with intent to cause hurt, &c.	Ditto ...	Ditto ...
329	Voluntarily causing grievous hurt to extort property or a valuable security, or to constrain to do anything which is illegal, or which may facilitate the commission of an offence.	Ditto ...	Ditto ...
330	Voluntarily causing hurt to extort confession or information, or to compel restoration of property, &c.	Ditto ...	Ditto ...
331	Voluntarily causing grievous hurt to extort confession or information, or to compel restoration of property, &c.	Ditto ...	Ditto ...
332	Voluntarily causing hurt to deter public servant from his duty.	Ditto ...	Ditto ...

THE HUMAN BODY.—(Continued.)

(Continued.)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable.	Not com- poundable.	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Transportation for life or imprisonment of either description for 10 years and fine.	Ditto
Bailable ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Not bailable.	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Bailable ...	Ditto ...	Imprisonment of either description for 3 years or fine, or both.	Court of Session, Presidency Ma- gistrate or Ma- gistrate of the first class.

CHAPTER XVI.—OFFENCES AFFECTING

Of Hurt.—

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
333	Voluntarily causing grievous hurt to deter public servant from his duty.	May arrest without warrant.	Warrant ...
334	Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Shall not arrest without warrant.	Summons...
335	Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	May arrest without warrant.	Ditto ...
336	Doing any act which endangers human life or the personal safety of others.	Ditto ...	Ditto ...
337	Causing hurt by an act which endangers human life &c.	Ditto ...	Ditto ...

THE HUMAN BODY.—(*Continued.*)

(Continued.)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable.	Not com- poundable.	Imprisonment of either de- scription for 10 years and fine.	Court of Session.
Bailable ...	Compound- able.	Imprisonment of either de- scription for 1 month or fine of 500 rupees, or both.	Any Magistrate.
Ditto ...	Compound- able when permission is given by the Court before which a prosecu- tion is pending.	Imprisonment of either description for 4 years or fine of 2,000 rupees, or both	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first or second class.
Ditto ...	Not com- poundable.	Imprisonment of either de- scription for 3 months or fine of 250 rupees, or both.	Any Magistrate.
Ditto ...	Compound- able when permission is given by the Court before which a prosecu- tion is pending.	Imprisonment of either description for 6 months or fine of 500 rupees, or both.	Presidency Magis- trate or Magis- trate of the first or second class.

CHAPTER XVI.—OFFENCES AFFECTING

Of Hurt—

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
338	Causing grievous hurt by an act which endangers human life, &c.	May arrest without warrant.	Summons...

Of Wrongful Restraint and

341	Wrongfully restraining any person ...	May arrest without warrant.	Summons...
342	Wrongfully confining any person ...	Ditto ...	Ditto ...
343	Wrongfully confining for three or more days.	Ditto ...	Ditto ...
344	Wrongfully confining for ten or more days.	Ditto ...	Ditto ...

THE HUMAN BODY.—(Continued.)

(Concluded.)

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Compoundable when permission is given by the Court before which a prosecution is pending.	Imprisonment of either description for 2 years or fine of 1,000 rupees, or both.	Presidency Magistrate of the first or second class.

Wrongful Confinement.

Bailable ...	Compoundable.	Simple imprisonment for 1 month or fine of 500 rupees, or both.	Any Magistrate.
Ditto ...	Ditto ...	Imprisonment of either description for 1 year or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Not compoundable.	Imprisonment of either description for 2 years or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.

CHAPTER XVI.—OFFENCES AFFECTING

Of Wrongful Restraint and

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
345	Keeping any person in wrongful confinement knowing that a writ has been issued for his liberation.	Shall not arrest without warrant.	Summons...
346	Wrongful confinement in secret ...	May arrest without warrant.	Ditto ...
347	Wrongful confinement for the purpose of extorting property or constraining to an illegal act, &c.	Ditto ...	Ditto ...
348	Wrongful confinement for the purpose of extorting confession or information, or of compelling restoration of property, &c.	Ditto ...	Ditto ...

Of Criminal Force

352	Assault or use of criminal force otherwise than on grave provocation.	Shall not arrest without warrant.	Summons...
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THE HUMAN BODY.—(Continued.)

Wrongful Confinement.—(Continued).

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Imprisonment of either description for 2 years in addition to imprison- ment under any other section.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.

and Assault.

Bailable ...	Compound- able.	Imprisonment of either description for 3 months or fine of 500 rupees, or both.	Any Magistrate.
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CHAPTER XVI.—OFFENCES AFFECTING
Of Criminal Force

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
353	Assault or use of criminal force to deter a public servant from discharge of his duty.	May arrest without warrant.	Warrant ...
354	Assault or use of criminal force to a woman with intent to outrage her modesty.	Ditto ...	Ditto ...
355	Assault or criminal force with intent to dishonour a person otherwise than on grave and sudden provocation.	Shall not arrest without warrant.	Summons...
356	Assault or criminal force in attempt to commit theft of property worn or carried by a person.	May arrest without warrant.	Warrant ...
357	Assault or use of criminal force in attempt wrongfully to confine a person.	Ditto ...	Ditto ...
358	Assault or use of criminal force on grave and sudden provocation.	Shall not arrest without warrant.	Summons...

THE HUMAN BODY.—(Continued.)

and Assault.—(Continued.)

5	6	7	18
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Imprisonment of either description for 2 years or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Compound- able.	Ditto ...	Ditto.
Not bailable	Not com- poundable	Ditto ...	Any Magistrate,
Bailable ...	Ditto ...	Imprisonment of either de- scription for 1 year or fine of 1,000 rupees, or both.	Ditto.
Ditto ...	Compound- able.	Simple imprisonment for 1 month or fine of 200 rupees, or both.	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING

Of Kidnapping, Abduction,

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
363	Kidnapping ...	May arrest without warrant.	Warrant ...
364	Kidnapping or abducting in order to murder.	Ditto ...	Ditto ...
365	Kidnapping or abducting with intent secretly and wrongfully to confine a person.	Ditto ...	Ditto ...
366	Kidnapping or abducting a woman to compel her marriage, or to cause her defilement, &c.	Ditto ...	Ditto ...
367	Kidnapping or abducting in order to subject a person to grievous hurt, slavery, &c.	Ditto ...	Ditto ...
368	Concealing or keeping in confinement a kidnapped person.	Ditto ...	Ditto ...
369	Kidnapping or abducting a child with intent to take property from the person of such child.	Ditto ...	Ditto ...

THE HUMAN BODY.—(Continued.)

Slavery, and Forced Labour.

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable.	Not com- poundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either de- scription for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Punishment for kidnab- ping or abduction.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.

CHAPTER XVI.—OFFENCES AFFECTING

Of Kidnapping, Abduction, Slavery,

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
370	Buying or disposing of any person as a slave.	Shall not arrest without warrant.	Warrant ...
371	Habitual dealing in slaves.	May arrest without warrant.	Ditto ...
372	Selling or letting to hire a minor for purposes of prostitution, &c.	Ditto ...	Ditto ...
373	Buying or obtaining possession of a minor for the same purposes.	Ditto ...	Ditto ...
374	Unlawful compulsory labour.	Ditto ...	Ditto ...

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376	Rape— If the sexual intercourse was by a man with his own wife.	Shall not arrest without warrant.	Summons...
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THE HUMAN BODY.—(*Continued.*)*and Forced Labour.*—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Imprisonment of either de- scription for 7 years and fine.	Court of Session.
Not bailable.	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Bailable ...	Compound- able.	Imprisonment of either description for 1 year or fine, or both.	Any Magistrate.

Rape.

Bailable ...	Not com- poundable.	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
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CHAPTER XVI.—OFFENCES AFFECTING

Of Rape

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
376 <i>cid.</i>	In any other case ...	May arrest without warrant.	Warrant ...

Of Unnatural

377	Unnatural offences ...	May arrest without warrant.	Warrant ...
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CHAPTER XVII.—OFFENCES

Of

379	Theft ...	May arrest without warrant.	Warrant ...
380	Theft in a building, tent, or vessel ...	Ditto ...	Ditto ...

THE HUMAN BODY.—(*Concluded.*)

—(Continued.)

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable.	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.

Offences.

Not bailable	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
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AGAINST PROPERTY.

Theft.

Not bailable.	Not compoundable.	Imprisonment of either description for 3 years or fine, or both.	Any Magistrate.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.

CHAPTER XVII.—OFFENCES

Of Theft

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
381	Theft by clerk or servant of property in possession of master or employer.	May arrest without warrant	Warrant ...
382	Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death or of hurt, or of restraint, in order to the committing of such theft or to retiring after committing it, or to retaining property taken by it.	Ditto ...	Ditto ...

Of

384	Extortion ...	Shall not arrest without warrant.	Warrant ...
385	Putting or attempting to put in fear of injury in order to commit extortion.	Ditto ...	Ditto ...
386	Extortion by putting a person in fear of death or grievous hurt.	Ditto ...	Ditto ...

AGAINST PROPERTY.—(*Continued.*)—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable.	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class
Ditto ...	Ditto ...	Rigorous imprisonment for 10 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.

Extortion.

Bailable ...	Not compoundable.	Imprisonment of either description for 3 years or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Ditto.
Not bailable.	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session,

CHAPTER XVII.—OFFENCES

Of Extortion

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
387	Putting or attempting to put a person in fear of death or grievous hurt in order to commit extortion.	Shall not arrest without warrant.	Warrant ...
388	Extortion by threat of accusation of an offence punishable with death, transportation for life, or imprisonment for 10 years.	Ditto ...	Ditto ...
	If the offence threatened be an unnatural offence.	Ditto ...	Ditto ...
389	Putting a person in fear of accusation of offence punishable with death, transportation for life, or with imprisonment for 10 years in order to commit extortion.	Ditto ...	Ditto ...
	If the offence be an unnatural offence ...	Ditto ...	Ditto ...

Of Robbery

392	Robbery ...	May arrest without warrant.	Warrant ...
	If committed on the highway between sunset and sunrise.	Ditto ...	Ditto ...

AGAINST PROPERTY.—(*Continued.*)—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable.	Not com- poundable.	Imprisonment of either description for 7 years and fine.	Court of Session.
Bailable ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Transportation for life ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Transportation for life ...	Ditto.

and Dacoity.

Not Bailable.	Not com- poundable.	Rigorous imprisonment for 10 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Rigorous imprisonment for 14 years and fine.	Ditto.

CHAPTER XVII.—OFFENCES

Of Robbery and

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
393	Attempt to commit robbery ...	May arrest without warrant.	Warrant ...
394	Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person jointly concerned in such robbery.	Ditto ...	Ditto ...
395	Dacoity ...	Ditto ...	Ditto ...
396	Murder in dacoity ...	Ditto ...	Ditto ...
397	Robbery or dacoity with attempt to cause death or grievous hurt.	Ditto ...	Ditto ...
398	Attempt to commit robbery or dacoity when armed with deadly weapon.	Ditto ...	Ditto ...
399	Making preparation to commit dacoity ...	Ditto ...	Ditto ...
400	Belonging to a gang of persons associated for the purpose of habitually committing dacoity.	Ditto ...	Ditto ...
401	Belonging to a wandering gang of persons associated for the purpose of habitually committing thefts.	Ditto ...	Ditto ...

AGAINST PROPERTY.—(Continued)

Dacoity.—(Continued.)

5	6	7	8
Whether bailable or not.	Whether compoundable or not	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable.	Not compoundable	Rigorous imprisonment for 7 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Court of Session.
Ditto ...	Ditto ...	Death, transportation for life, or rigorous imprisonment for 10 years and fine	Ditto.
Ditto ...	Ditto ...	Rigorous imprisonment for not less than 7 years.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Rigorous imprisonment for 10 years and fine	Ditto.
Ditto ...	Ditto ...	Transportation for life or rigorous imprisonment for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Rigorous imprisonment for 7 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.

CHAPTER XVII.—OFFENCES

Of Robbery and

1	2	3	4
SECTION	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance
402	Being one of five or more persons assembled for the purpose of committing dacoity.	May arrest without warrant.	Warrant ...

Of Criminal Misappro-

403	Dishonest misappropriation of moveable property, or converting it to one's own use.	Shall not arrest without warrant.	Warrant ...
404	Dishonest misappropriation of property, knowing that it was in possession of a deceased person at his death, and that it has not since been in the possession of any person legally entitled to it.	Ditto ...	Ditto ...
405	If by clerk or person employed by deceased.	Ditto ...	Ditto ...

Of Criminal

406	Criminal breach of trust.	May arrest without warrant.	Warrant ...
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AGAINST PROPERTY.—(*Continued.*)*Dacoity.*—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable.	Not com- poundable.	Rigorous imprisonment for 7 years and fine.	Court of Session.

Privation of Property.

Bailable ...	Not com- poundable.	Imprisonment of either description for 2 years or fine, or both.	Any Magistrate.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session. Presidency Ma- gistrate, or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.

Breach of trust.

Not bailable.	Not com- poundable.	Imprisonment of either description for 3 years or fine, or both.	Court of Session Presidency Ma- gistrate, or Ma- gistrate of the first or second class.
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CHAPTER XVII.—OFFENCES

Of Criminal Breach

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
407	Criminal breach of trust by a carrier, wharfinger, &c.	May arrest without warrant.	Warrant ...
408	Criminal breach of trust by a clerk or servant.	Ditto ...	Ditto ...
409	Criminal breach of trust by public servant, or by banker, merchant or agent &c.	Ditto ...	Ditto ...

Of the Receiving

411	Dishonestly receiving stolen property, knowing it to be stolen.	May arrest without warrant.	Warrant ...
412	Dishonestly receiving stolen property, knowing that it was obtained by dacoity.	Ditto ...	Ditto ...

AGAINST PROPERTY.—(*Continued*).*of Trust*.—(Continued.)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable	Not com- poundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Ditto ...	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.

of Stolen Property.

Not bailable	Not com- poundable.	Imprisonment of either description for 3 years and fine, or both.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.

CHAPTER XVII.—OFFENCES

Of the receiving of

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
413	Habitually dealing in stolen property ...	May arrest without warrant	Warrant ...
414	Assisting in concealment or disposal of stolen property, knowing it to be stolen.	Ditto ...	Ditto ...

of

417	Cheating ...	Shall not arrest without warrant.	Warrant ...
418	Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	Ditto ...	Ditto ...
419	Cheating by personation ...	May arrest without warrant.	Ditto ...

AGAINST PROPERTY.—(*Continued.*)*Sto en Property.*—(Continued.)

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.

Cheating.

Bailable ...	Not compoundable.	Imprisonment of either description for 1 year or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Ditto.

CHAPTER XVII.—OFFENCES

Of Cheating

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
420	Cheating and thereby dishonestly inducing delivery of property or the making, alteration, or destruction of a valuable security.	May arrest without warrant.	Warrant ...

Of Fraudulent Deeds and

421	Fraudulent removal or concealment of property, &c., to prevent distribution among creditors.	Shall not arrest without warrant.	Warrant ...
422	Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	Ditto ...	Ditto ...
423	Fraudulent execution of deed of transfer containing a false statement of consideration.	Ditto ...	Ditto ...
424	Fraudulent removal or concealment of property, of himself or any other person, or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled.	Ditto ...	Ditto ...

AGAINST PROPERTY.—(*Continued.*)—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not	Punishment under the Indian Penal Code.	By what Court triable
Bailable ...	Not com- poundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.

Disposition of Property.

Bailable ...	Not com- poundable.	Imprisonment of either de-scription for 2 years or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.

CHAPTER XVII.—OFFENCES

Of

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
426	Mischief ...	Shall not arrest without warrant.	Summons ...
427	Mischief, and thereby causing damage to the amount of 50 rupees or upwards,	Ditto ...	Warrant ...
428	Mischief by killing, poisoning, maiming, or rendering useless any animal of the value of 10 rupees or upwards.	May arrest without warrant.	Ditto ...
429	Mischief by killing, poisoning, maiming, or rendering useless any elephant, camel, horse, &c., whatever may be its value, or any other animal of the value of 50 rupees or upwards.	Ditto ...	Ditto ...
430	Mischief by causing diminution of supply of water for agricultural purposes, &c.	Ditto ...	Ditto ...

AGAINST PROPERTY.—(*Continued.*)*Mischief.*

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Compound- able when the only loss or damage caused is loss or damage to a private person.	Imprisonment of either description for 3 months or fine, or both.	Any Magistrate
Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Presidency Magis- trate or Magis- trate of the first or second class.
Ditto ...	Not com- poundable.	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 5 years or fine, or both.	Court of Session, Presidency Ma- gistrate or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Ditto.

CHAPTER XVII.—OFFENCES

Of Mischief

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
431	Mischief by injury to public road, bridge, navigable river, or navigable channel, and rendering it impassable or less safe for travelling or conveying property.	May arrest without warrant.	Warrant ...
432	Mischief by causing inundation or obstruction to public drainage attended with damage.	Ditto ...	Ditto ...
433	Mischief by destroying or moving or rending less useful a light-house or sea-mark, or by exhibiting false lights.	Ditto ...	Ditto ...
434	Mischief by destroying or moving, &c, a land-mark fixed by public authority.	Shall not arrest without warrant.	Ditto ...
435	Mischief by fire or explosive substance with intent to cause damage to amount of 100 rupees or upwards, or, in case of agricultural produce, 10 rupees or upwards.	May arrest without warrant.	Ditto ...
436	Mischief by fire or explosive substance with intent to destroy a house, &c.	Ditto ...	Ditto ...

AGAINST PRO PERTY.—(*Continued.*)—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Imprisonment of either description for 5 years or fine, or both.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years or fine, or both.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 1 year or fine, or both.	Presidency Ma- gistrate, or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either de- scription for 7 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Not bailable.	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.

CHAPTER XVII.—OFFENCES

Of Mischief

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
437	Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20-ton burden.	May arrest without warrant.	Warrant ...
438	The mischief described in the last section when committed by fire or any explosive substance.	Ditto ...	Ditto ...
439	Running vessel ashore with intent to commit theft, &c.	Ditto ...	Ditto ...
440	Mischief committed after preparation made for causing death, or hurt, &c.	Ditto ...	Ditto ...

Of Criminal

447	Criminal trespass ...	May arrest without warrant.	Summons ...
448	House-trespass ...	Ditto ...	Warrant ...

AGAINST PROPERTY.—(*Continued.*)

—(Concluded.)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable.	Not com- poundable.	Imprisonment of either description for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Ditto ..	Ditto ...	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.

Trespass.

Bailable ...	Compound- able.	Imprisonment of either description for 3 months or fine of 500 rupees, or both.	Any Magistrate.
Ditto ...	Ditto ...	Imprisonment of either description for 1 year or fine of 1,000 rupees, or both.	Ditto.

CHAPTER XVII.—OFFENCES

Of Criminal Trespass

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
449	House-trespass in order to the commission of an offence punishable with death.	May arrest without warrant.	Warrant ...
450	House-trespass in order to the commission of an offence punishable with transportation for life.	Ditto ...	Ditto ...
451	House-trespass in order to the commission of an offence punishable with imprisonment.	Ditto ...	Ditto ...
	If the offence is theft ...	Ditto ...	Ditto ...
452	House trespass, having made preparation for causing hurt, assault, &c.	Ditto ...	Ditto ...
453	Lurking house-trespass or house-breaking.	Ditto ...	Ditto ...

AGAINST PROPERTY.—(*Continued.*)

—(Continued.)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable
Not bailable	Not com- poundable.	Transportation for life, or rigorous imprisonment for 10 years and fine	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either de- scription for 10 years and fine.	Ditto
Bailable ...	Ditto ...	Imprisonment of either de- scription for 2 years and fine.	Any Magistrate.
Not bailable.	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either de- scription for 2 years and fine.	Presidency Magis- trate or Magis- trate of the first or second class.

CHAPTER XVII.—OFFENCES

Of Criminal Trespass.

1	2	3	4
SECTION.	OFFENCE.]	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
454	Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment.	May arrest without warrant.	Warrant ...
	If the offence is theft.	Ditto ...	Ditto ...
455	Lurking house-trespass or house-breaking after preparation made for causing hurt, assault, &c.	Ditto ...	Ditto ...
456	Lurking house-trespass or house-breaking by night.	Ditto ...	Ditto ...
457	Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.	Ditto ...	Ditto ...

AGAINST PROPERTY.—(*Continued.*)

—(Continued.)

5	6	7	8
Whether bailable or not.	Whether compoundable or not	Punishment under the Indian Penal Code.	By what Court, triable.
Not Bailable.	Not compoundable.	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Court of Session, Presidency Magistrate, or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.

CHAPTER XVII.—OFFENCES

Of Criminal Trespass.

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
457 <i>etd.</i>	If the offence is theft ...	May arrest without war- rant.	Warrant ...
458	Lurking house-trespass or house-breaking by night, after preparation made for causing hurt, &c.	Ditto ...	Ditto ...
459	Grievous hurt caused whilst committing lurking house-trespass or house-breaking.	Ditto ...	Ditto ...
460	Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, &c.	Ditto ...	Ditto ...
461	Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property.	Ditto ...	Ditto ...
462	Being entrusted with any closed receptacle containing or supposed to contain any property, and fraudulently opening the same.	Ditto ...	Ditto ...

AGAINST PROPERTY.—(*Concluded.*)

—(Concluded.)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable.	Not com- poundable.	Imprisonment of either description for 14 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Court of Session Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Transportation for life, or Imprisonment of either description for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Presidency Magis- trate or Magis- trate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years or fine, or both.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first or second class.

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS,

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
465	Forgery ...	Shall not arrest without warrant.	Warrant ...
466	Forgery of a record of a Court of Justice or of a Register of Births, &c, kept by a public servant.	Ditto ...	Ditto ...
467	Forgery of a valuable security, will, or authority to make or transfer any valuable security, or to receive any money, &c.	Ditto ...	Ditto ...
	When the valuable security is a promissory note of the Government of India.	May arrest without warrant.	Ditto ...
468	Forgery for the purpose of cheating ...	Shall not arrest without warrant.	Ditto ...
469	Forgery for the purpose of harming the reputation of any person, or knowing that it is likely to be used for that purpose.	Ditto ...	Ditto ...
471	Using as genuine a forged document which is known to be forged.	Ditto ...	Ditto ...

AND TO TRADE OR PROPERTY MARKS.

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable	Imprisonment of either description for 2 years or fine, or both.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Not bailable.	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Bailable ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
Ditto ...	Ditto ...	Punishment for forgery of such document.	Same Court as that by which the forgery is triable.

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS,

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
471 <i>ctd.</i>	When the forged document is a promissory note of the Government of India.	May arrest without warrant.	Warrant ...
472	Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable under section 467 of the Indian Penal Code or possessing with like intent any such seal, plate, &c., knowing the same to be counterfeit.	Shall not arrest without warrant.	Ditto ...
473	Making or counterfeiting a seal, plate &c., with intent to commit a forgery punishable otherwise than under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, &c., knowing the same to be counterfeit	Ditto ...	Ditto ...
474	Having possession of a document, knowing it to be forged, with intent to use it as genuine; if the document is one of the description mentioned in section 466 of the Indian Penal Code.	Ditto ...	Ditto ...
	If the document is one of the description mentioned in section 467 of the Indian Penal Code.	Ditto ...	Ditto ...

AND TO TRADE OR PROPERTY MARKS.—(Continued.)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable	Punishment for forgery of such documents.	Court of Session.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Transportation for life or imprisonment of either description for 7 years and fine.	Ditto.

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS,

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
475	Counterfeiting a device or mark used for authenticating documents described in section 467 of the Indian Penal Code, or possessing counterfeit-marked material.	Shall not arrest without warrant.	Warrant ...
476	Counterfeiting a device or mark used for authenticating documents other than those described in section 467 of the Indian Penal Code, or possessing counterfeit-marked material.	Ditto ...	Ditto ...
477	Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting, a will, &c.	Ditto ...	Ditto ...
477A	Falsification of accounts ...	Ditto ...	Ditto ...

Of Trade and

482	Using a false trade or property-mark with intent to deceive or injure any person.	Shall not arrest without warrant.	Warrant ...
483	Counterfeiting a trade or property-mark used by another with intent to cause damage or injury.	Ditto ...	Ditto ...

AND TO TRADE OR PROPERTY MARKS.—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Transportation for life, or imprisonment of either description for 7 years and fine.	Court of Session.
Not bailable.	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.

Property Marks.

Bailable ...	Not com- poundable.	Imprisonment of either description for 1 year or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Ditto

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS,

Of Trade and

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
484	Counterfeiting a property-mark used by a public servant, or any mark used by him to denote the manufacture, quality, &c., of any property.	Shall not arrest without warrant.	Summons ...
485	Fraudulently making or having possession of any die, plate, or other instrument for counterfeiting any public or private property or trade-mark.	Ditto ...	Ditto ...
486	Knowingly selling goods marked with a counterfeit property or trade-mark.	Ditto ...	Ditto ...
487	Fraudulently making a false mark upon any package or receptacle containing goods with intent to cause it to be believed that it contains goods which it does not contain, &c.	Ditto ...	Ditto ...
488	Making use of any such false mark ...	Ditto ...	Ditto ...
489	Removing, destroying, or defacing any property-mark with intent to cause injury.	Ditto ...	Ditto ...

AND TO TRADE OR PROPERTY MARKS.—(Continued.)

Property Marks.—(Continued.)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 1 year or fine, or both.	Presidency Magis- trate or Magis- trate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years or fine, or both.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 1 year or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS

Of Currency-notes

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
489A	*Counterfeiting currency-notes or bank-notes.	May arrest without warrant.	Warrant ...
489B	Using as genuine forged or counterfeit currency-notes or bank-notes.	Ditto ...	Ditto ...
489C	Possession of forged or counterfeit currency-notes or bank-notes.	Ditto ...	Ditto ...
489D	Making or possessing instruments or materials for forging or counterfeiting currency-notes or bank-notes.	Ditto ...	Ditto ...

CHAPTER XIX.—CRIMINAL

490	Being bound by contract to render personal service during a voyage or journey, or to convey or guard any property or person, and voluntarily omitting to do so.	Shall not arrest without warrant.	Summons...
491	Being bound to attend or supply the wants of a person who is helpless from youth, unsoundness of mind, or disease, and voluntarily omitting to do so.	Ditto ...	Ditto ...

* Items 489A to 489D have been added by the

AND TO TRADE OR PROPERTY MARKS.—(*Concluded*)*and Bank-notes.*

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable	Not com- poundable.	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Bailable ...	Ditto ...	Imprisonment of either description for 7 years or fine, or both.	Ditto.
Not bailable.	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.

BREACH OF CONTRACTS OF SERVICE.

Bailable ...	Compound- able.	Imprisonment of either description for 1 month or fine of 100 rupees, or both.	Presidency Magis- trate or Magis- trate of the first or second class.
Ditto ..	Ditto ...	Imprisonment of either de- scription for 3 months or fine of 200 rupees, or both.	Ditto.

Currency Notes Forgery Act (XII. of 1899), s. 3.

CHAPTER XIX.—CRIMINAL BREACH

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
492	Being bound by contract to render personal service for a certain period at a distant place to which the employee is conveyed at the expense of the employer, and voluntarily deserting the service, or refusing to perform the duty.	Shall not arrest without warrant.	Summons...

CHAPTER XX.—OFFENCES

493	A man by deceit causing a woman not lawfully married to him to believe that she is lawfully married to him, and to cohabit with him in that belief.	Shall not arrest without warrant.	Warrant ...
494	Marrying again during the lifetime of a husband or wife.	Ditto ...	Ditto ...
495	Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.	Ditto ...	Ditto ...
496	A person with fraudulent intention going through the ceremony of being married, knowing that he is not thereby lawfully married.	Ditto ...	Ditto ...
497	Adultery	Ditto ...	Ditto ...

OF CONTRACTS OF SERVICE.—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Compound- able.	Imprisonment of either de- scription for 1 month or fine of double the expense incurred, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.

RELATING TO MARRIAGE.

Not bailable.	Not com- poundable.	Imprisonment of either description for 10 years and fine.	Court of Session.
Bailable ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Not bailable.	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Bailable ...	Compound- able.	Imprisonment of either description for 5 years or fine, or both.	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.

CHAPTER XX.—OFFENCES

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
498	Enticing or taking away, or detaining with a criminal intent, a married woman.	Shall not arrest without warrant.	Warrant ...

CHAPTER XXI.

500	Defamation	Shall not arrest without warrant.	Warrant ...
501	Printing or engraving matter, knowing it to be defamatory.	Ditto ...	Ditto ...
502	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	Ditto ...	Ditto ...

CHAPTER XXII.—CRIMINAL INTIMIDATION

504	Insult intended to provoke a breach of the peace.	Shall not arrest without warrant.	Warrant ...
505	False statement, rumour, &c., circulated with intent to cause mutiny or offence against the public peace.	Ditto ...	Ditto ...
506	Criminal intimidation	Ditto ...	Ditto ...
	if threat be to cause death or grievous hurt, &c.	Ditto ...	Ditto ...

RELATING TO MARRIAGE.—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Compoundable.	Imprisonment of either description for 2 years or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

—DEFAMATION.

Bailable ...	Compoundable.	Simple imprisonment for 2 years or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.

INSULT, AND ANNOYANCE.

Bailable ...	Compoundable.	Imprisonment of either description for 2 years or fine, or both.	Any Magistrate.
Not bailable.	Not compoundable.	Ditto ...	Presidency Magistrate or Magistrate of the first class.
Bailable ...	Compoundable.	Ditto ...	Ditto.
Ditto ...	Not compoundable.	Imprisonment of either description for 7 years or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.

CHAPTER XXII.—CRIMINAL INTIMIDATION

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not	Whether a warrant or a summons shall ordinarily issue in the first instance.
507	Criminal intimidation by anonymous communication, or having taken precaution to conceal whence the threat comes.	Shall not arrest without warrant.	Warrant ...
508	Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure.	Ditto ...	Ditto ...
509	Uttering any word or making any gesture intended to insult the modesty of a woman, &c.	Ditto ...	Ditto ...
510	Appearing in a public place, &c., in a state of intoxication, and causing annoyance to any person.	Ditto ...	Ditto ...

CHAPTER XXIII.—ATTEMPTS

511	Attempting to commit offences punishable with transportation or imprisonment, and in such attempt doing any act towards the commission of the offence.	According as the offence is one in respect of which the police may arrest without warrant or not.	According as the offence is one in respect of which a summons or warrant shall ordinarily issue.
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INSULT, AND ANNOYANCE.—(*Continued.*)

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not compoundable.	Imprisonment of either description for 2 years in addition to the punishment under above section.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 1 year or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Simple imprisonment for 1 year or fine, or both.	Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Simple imprisonment for 24 hours or fine of 10 rupees, or both.	Any Magistrate.

TO COMMIT OFFENCES.

According as the offence contemplated by the offender is bailable or not.	Compoundable when the offence attempted is compoundable.	Transportation or imprisonment not exceeding half of the longest term, and of any description, provided for the offence, or fine, or both.	The Court by which the offence attempted is triable.
---	--	--	--

OFFENCES AGAINST

1	2	3	4
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
	If punishable with death, transportation, or imprisonment for 7 years or upwards.	May arrest without warrant.	Warrant ...
	If punishable with imprisonment for 3 years and upwards, but less than seven.	Ditto ...	Ditto ...
	If punishable with imprisonment for one year and upwards, and less than 3 years.	Shall not arrest without warrant.	Summons...
	If punishable with imprisonment for less than one year, or with fine only.	Ditto ...	Ditto ...

OTHER LAWS.

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Act offended against.	By what Court triable.
Not bailable.	Not com- poundable.	.....	Court of Session.
Ditto (ex- cept in cases under the Indian Arms Act, 1878, sec- tion 19, which shall be bailable).	Ditto ...	.....	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first class.
Bailable ...	Ditto ...	.....	Court of Session, Presidency Ma- gistrate, or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	.....	Any Magistrate.

SCHEDULE III.

(See section 36.)

ORDINARY POWERS OF PROVINCIAL MAGISTRATES.

I.—Ordinary Powers of a Magistrate of the Third Class.

- (1) Power to arrest, or direct the arrest of, and to commit to custody, a person committing an offence in his presence—section 64.
- (2) Power to arrest, or direct the arrest in his presence of, an offender—section 65.
- (3) Power to endorse a warrant, or to order the removal of an accused person arrested under a warrant—sections 83, 84, and 86.
- (4) Power to issue proclamations in cases judicially before him—section 87.
- (5) Power to attach and sell property in cases judicially before him—section 88.
- (6) Power to restore attached property—section 89.
- (7) Power to require search to be made for letters and telegrams—section 95.
- (8) Power to issue search warrant—section 96.
- (9) Power to endorse a search warrant, and order delivery of thing found—section 99.
- (10) Power to command unlawful assembly to disperse—section 127.
- (11) Power to use civil force to disperse unlawful assembly—section 128.
- (12) Power to require military force to be used to disperse unlawful assembly—section 130.
- (13) Power to record statements or confessions during a police-investigation—section 164.
- (14) Power to authorize detention of a person during a police-investigation—section 167.
- (15) Power to detain an offender found in Court—section 351.
- (16) Power to take cognizance of offence, although committed by European British subject, and to issue process returnable before a Magistrate having jurisdiction—section 445.
- (17) Power to apply to District Magistrate to issue commission for examination of witness—section 506 (2).
- (18) Power to recover penalty on forfeited bond for appearance before Magistrate's Court—section 514.
- (19) Power to make order as to disposal of property—section 517.
- (20) Power to sell perishable property of a suspected character—section 525.

SCHEDULE III.—(*Continued.*)ORDINARY POWERS OF PROVINCIAL MAGISTRATES.—(*Contd.*)*II.—Ordinary Powers of a Magistrate of the Second Class.*

- (1) The ordinary powers of a Magistrate of the third class.
- (2) Power to order the police to investigate an offence in cases in which the Magistrate has jurisdiction to try or commit for trial—section 155.
- (3) Power to postpone issue of process—section 202.
- (4) Power to order destruction of libellous and other matter—section 521.

III.—Ordinary Powers of a Magistrate of the First Class.

- (1) The ordinary powers of a Magistrate of the second class.
- (2) Powers to issue search-warrant otherwise than in course of an inquiry—section 98.
- (3) Power to issue search-warrant for discovery of persons wrongfully confined—section 100.
- (4) Power to require security to keep the peace—section 107.
- (5) Power to require security for good behaviour—section 109.
- (6) Power to discharge sureties—section 126.
- (7) Power to make orders, &c, in possession-cases—sections 145, 146 and 147.
- (8) Power to commit for trial—section 206.
- (9) Power to stop proceedings when no complainant—section 249.
- (10) Power to make orders of maintenance—sections 488 and 489.
- (11) Power to take evidence on commission—section 503.
- (12) Power to recover penalty on forfeited bond—section 514.
- (13) Power to make order as to first offenders—section 562.

IV.—Ordinary Powers of a Sub divisional Magistrate.

- (1) The ordinary powers of a Magistrate of the first class.
- (2) Power to direct warrants to landholders—section 78.
- (3) Power to require security for good behaviour—section 110.
- (4) Power to make order as to local nuisances—section 133.
- (5) Power to make orders prohibiting repetitions of nuisances—section 143.
- (6) Power to make orders under section 144.
- (7) Power to depute Subordinate Magistrate to make local inquiry—section 148.

SCHEDULE III.—(*Continued.*)ORDINARY POWERS OF PROVINCIAL MAGISTRATES.—(*Continued.*)*IV.—Ordinary Powers of a Sub-divisional Magistrate (continued).*

- (8) Power to order police-investigation into cognizable case—section 156.
- (9) Power to receive report of police-officer and pass order—section 173.
- (10) Power to hold inquests—section 174.
- (11) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction—section 186.
- (12) Power to entertain complaints—section 190.
- (13) Power to receive police-reports—section 190.
- (14) Power to entertain cases without complaint—section 190.
- (15) Power to transfer cases to a Subordinate Magistrate—section 192.
- (16) Power to pass sentence on proceedings recorded by a subordinate Magistrate—section 349.
- (17) Power to forward record of inferior Court to District Magistrate—section 435. (2).
- (18) Power to sell property alleged or suspected to have been stolen, &c.—section 524.
- (19) Power to withdraw cases other than appeals, and to try or refer them for trial—section 528.
- (20) Power to order released convicts to notify residence—section 565.

*V.—Ordinary Powers of a District Magistrate.**

- (1) The ordinary powers of a Sub-divisional Magistrate.
- (2) Power to require delivery of letters, telegrams, &c.—section 95.
- (3) Power to issue search-warrant for documents in custody of postal or telegraph authorities—section 96.
- (4) Power to require security for good behaviour in case of sedition—section 105.
- (5) Power to discharge persons bound to keep the peace or to be of good behaviour—section 124.
- (6) Power to cancel bond for keeping the peace—section 125.
- (7) Power to try summarily—section 260.
- (8) Power to quash convictions in certain cases—section 350.

* Under the Punjab Frontier Crimes Regulation (IV. of 1887), the Additional District Magistrate shall have the powers specified in Part V.—See s. 5 (2) of the Regulation.

SCHEDULE III.—(*Concluded.*)ORDINARY POWERS OF PROVINCIAL MAGISTRATES.—(*Concluded.*)*V.—Ordinary Powers of a District Magistrate (continued).*

- (9) Power to hear appeals from orders requiring security for good behaviour—section 406.
 - (10) Power to hear or refer appeals from convictions by Magistrates of the second and third classes—section 407.
 - (11) Power to call for records—section 435.
 - (12) Power to order commitment—section 436.
 - (13) Power to order inquiry into complaint dismissed or case of accused discharged—section 437.
 - (14) Power to report case to High Court—section 438.
 - (15) Power to try European British subjects—section 443.
 - (16) Power to sentence European British subject to more than three months' imprisonment or one thousand rupees fine, or both—section 446.
 - (17) Power to appoint person to be public prosecutor in particular case—section 492 (2).
 - (18) Power to issue commission for Examination of witness—sections 503, 506.
 - (19) Power to hear appeal from or revise orders passed under section 514—section 515.
 - (20) Power to compel restoration of abducted female—section 552.
-

SCHEDULE IV.

(See sections 37 and 38.)

ADDITIONAL POWERS WITH WHICH PROVINCIAL MAGISTRATES MAY
BE INVESTED.

POWERS WITH WHICH
A MAGISTRATE OF
THE FIRST CLASS
MAY BE INVESTED.

By the Lo-
cal Gov-
ernment.

- (1) Power to require security for good behaviour in case of sedition—section 108 :
- (2) Power to require security for good behaviour—section 110 :
- (3) Power to make orders as to local nuisances—section 133 :
- (4) Power to make orders prohibiting repetitions of nuisances—section 143
- (5) Power to make orders under section 144 :
- (6) Power to hold inquests—section 174 .
- (7) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction—section 186 :
- (8) Power to take cognizance of offences upon complaint—section 190 :
- (9) Power to take cognizance of offences upon police-reports—section 190 :
- (10) Power to take cognizance of offences without complaint—section 190 :

SCHEDULE IV.—(Continued.)

ADDITIONAL POWERS WITH WHICH PROVINCIAL MAGISTRATES MAY BE INVESTED (continued).

BY THE LOCAL GOVERNMENT— <i>ctd.</i>	<ul style="list-style-type: none"> (11) Power to try summarily—section 260 : (12) Power to hear appeals from convictions by Magistrates of the second and third classes—section 407 : (13) Power to sell property alleged or suspected to have been stolen, &c.—section 524 : (14) Power to order released convicts to notify residence—section 565 . (15) Power to try cases under section 124A of the Indian Penal Code.
POWERS WITH WHICH A MAGISTRATE OF THE FIRST CLASS MAY BE INVESTED—(contd.)	BY THE DISTRICT MAGISTRATE.
	<ul style="list-style-type: none"> (1) Power to make orders prohibiting repetitions of nuisances—section 143 : (2) Power to make orders under section 144 : (3) Power to hold inquests—section 174 : (4) Power to take cognizance of offences upon complaint—section 190 : (5) Power to take cognizance of offences upon police reports—section 190 : (6) Power to transfer cases—section 192.

SCHEDULE IV.—(*Continued.*)ADDITIONAL POWERS WITH WHICH PROVINCIAL MAGISTRATES MAY BE INVESTED (*continued*).POWERS WITH WHICH
A MAGISTRATE OF
THE SECOND CLASS
MAY BE INVESTED.BY THE LO-
CAL GOV-
ERNMENT.

- (1)*
- (2) Power to make orders prohibiting repetitions of nuisances—section 143 :
- (3) Power to make orders under section 144 :
- (4) Power to hold inquests—section 174 :
- (5) Power to take cognizance of offences upon complaint—section 190 :
- (6) Power to take cognizance of offences upon police-reports—section 190 :
- (7) Power to take cognizance of offences without complaint—section 190 :
- (8) Power to commit for trial—section 206 :
- (9) Power to make order as to first offenders—section 562 :

BY THE
DISTRICT
MAGIS-
TRATE.

- (1) Power to make orders prohibiting repetitions of nuisances—section 143 :
- (2) Power to make orders under section 144 :
- (3) Power to hold inquests—section 174 :
- (4) Power to take cognizance of offences upon complaint—section 190 :
- (5) Power to take cognizance of offences upon police-reports—section 190 :

* Here the words and figures, "Power to pass sentences of whipping—section 32," are repealed by Act IV. of 1909, and therefore omitted.

SCHEDULE IV.—(*Concluded.*)

ADDITIONAL POWERS WITH WHICH PROVINCIAL MAGISTRATES MAY BE INVESTED (*concluded.*)

POWERS WITH WHICH
A MAGISTRATE OF
THE THIRD CLASS
MAY BE INVESTED.

- | | | |
|--------------------------------------|--|---|
| | | (1) Power to make orders prohibiting repetitions of nuisances—section 143 : |
| | | (2) Powers to make orders under section 144 : |
| { BY THE LO-
CAL GOV-
ERNMENT. | | (3) Power to hold inquests—section 174 : |
| | | (4) Power to take cognizance of offences upon complaint—section 190 : |
| | | (5) Power to take cognizance of offences upon police-reports—section 190 : |
| | | (6) Power to commit for trial—section 206. |

- | | | |
|--|--|---|
| | | (1) Power to make orders prohibiting repetitions of nuisances—section 143 : |
| { BY THE
DISTRICT
MAGIS-
TRATE. | | (2) Power to make orders under section 144 : |
| | | (3) Power to hold inquests—section 174 : |
| | | (4) Power to take cognizance of offences upon complaint—section 190 : |
| | | (5) Power to take cognizance of offences upon police-reports—section 190. |

POWERS WITH WHICH A SUB-DIVISIONAL MAGISTRATE MAY BE INVESTED.	{ BY THE LO- CAL GOV- ERNMENT.	Power to call for records
		—section 435.

SCHEDULE V.

(See section 554.)

FORMS.

I.—SUMMONS TO AN ACCUSED PERSON.

(See section 68.)

To

of

WHEREAS your attendance is necessary to answer to a charge of (*state shortly the offence charged*), you are hereby required to appear in person (*or by pleader, as the case may be*) before the (*Magistrate*) of , on the day of . Herein fail not.

Dated this day of , 19

(Seal.)

(Signature.)

II.—WARRANT OF ARREST.

(See section 75.)

To [*name and designation of the person or persons who is or are to execute the warrant*].

WHEREAS of stands charged with the offence of (*state the offence*), you are hereby directed to arrest the said , and to produce him before me. Herein fail not.

Dated this day of , 19

(Seal.)

(Signature.)

(See section 76.)

This warrant may be endorsed as follows:—

If the said shall give bail himself in the sum of with one surety in the sum of (*or two sureties, each in the sum of*) to attend before me on the day of , and to continue so to attend until otherwise directed by me, he may be released.

Dated this day of , 19

(Signature.)

III.—BOND AND BAIL-BOND AFTER ARREST UNDER A WARRANT.

(See section 86.)

I (*name*), of , being brought before the District Magistrate of (*or as the case may be*) under a warrant issued to compel my appearance to answer to the charge of , do hereby bind myself to

SCHEDULE V.—(Continued.)

FORMS (continued).

attend in the Court of _____ on the _____ day of _____ next to answer to the said charge, and to continue so to attend until otherwise directed by the Court; and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of _____ Rupees

Dated this _____ day of _____, 19 ____.

(Signature.)

I do hereby declare myself surety for the above-named _____ of _____, that he shall attend before _____ in the Court of _____ on the _____ day of _____ next to answer to the charge on which he has been arrested, and shall continue so to attend until otherwise directed by the Court; and, in case of his making default therein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of _____ Rupees.

Dated this _____ day of _____, 19 ____.

(Signature.)

IV.—PROCLAMATION REQUIRING THE APPEARANCE OF A PERSON ACCUSED.

(See section 87.)

WHEREAS complaint has been made before me that (*name, description, and address*) has committed (*or is suspected to have committed*) the offence of _____, punishable under section _____ of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found, and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or is concealing himself to avoid the service of the said warrant*);

Proclamation is hereby made that the said _____ of _____ is required to appear at (*place*) before this Court (*or before me*) to answer the said complaint within _____ days from this date.

Dated this _____ day of _____, 19 ____.

(Seal.)

(Signature.)

V.—PROCLAMATION REQUIRING THE ATTENDANCE OF A WITNESS.

(See section 87.)

WHEREAS complaint has been made before me that (*name, description and address*) has committed (*or is suspected to have committed*) the offence of (*mention the offence concisely*), and a warrant has been issued to compel

SCHEDULE V —(Continued.)

FORMS (continued).

the attendance of (*name, description, and address of the witness*) before this Court to be examined touching the matter of the said complaint; and whereas it has been returned to the said warrant that the said (*name of witness*) cannot be found and it has been shown to my satisfaction that he has absconded (*or is concealing himself to avoid the service of the said warrant*):

Proclamation is hereby made that the said (*name*) is required to appear at (*place*) before the Court of _____ on the _____ day of _____ next at _____ o'clock, to be examined touching _____, the offence complained of.

Dated this _____ day of _____, 19 ____.

(Seal.)

(Signature)

VI.—ORDER OF ATTACHMENT TO COMPEL THE ATTENDANCE OF A WITNESS.

(See section 88.)

To the Police-officer in charge of the police-station at _____.

WHEREAS a warrant has been duly issued to compel the attendance of (*name, description, and address*) to testify concerning a complaint pending before this Court, and it has been returned to the said warrant that it cannot be served, and whereas it has been shown to my satisfaction that he has absconded (*or is concealing himself to avoid the service of the said warrant*): and thereupon a Proclamation was duly issued and published requiring the said _____ to appear and give evidence at the time and place mentioned therein, and he has failed to appear:

This is to authorize and require you to attach by seizure the moveable property belonging to the said _____ to the value of Rupees _____ which you may find within the District of _____, and to hold the said property under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this _____ day of _____, 19 ____.

(Seal.)

(Signature.)

ORDER OF ATTACHMENT TO COMPEL THE APPEARANCE OF A PERSON ACCUSED.

(See section 88.)

To (*name and designation of the person or persons who is or are to execute the warrant*).
:

WHEREAS complaint has been made before me that (*name, description, and address*) has committed (*or is suspected to have committed the offence*)

SCHEDULE V.—(Continued.)

FORMS—(continued).

of _____, punishable under section _____ of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found: and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or is concealing himself to avoid the service of the said warrant*), and thereupon a Proclamation was duly issued and published requiring the said _____ to appear to answer the said charge within _____ days: and whereas the said _____ is possessed of the following property other than land paying revenue to Government in the village (*or town*) of _____, in the District of _____, *viz.*, _____ and an order has been made for the attachment thereof _____:

You are hereby required to attach the said property by seizure, and to hold the same under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this _____ day of _____, 19 ____.

(Seal.)

(Signature.)

ORDER AUTHORIZING AN ATTACHMENT BY THE DEPUTY COMMISSIONER AS COLLECTOR.

(See section 88.)

To the Deputy Commissioner of the District of _____

WHEREAS complaint has been made before me that (*name, description, and address*) has committed (*or is suspected to have committed*) the offence of _____ punishable under section _____ of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found, and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or is concealing himself to avoid the service of the said warrant*), and thereupon a Proclamation was duly issued and published, requiring the said _____ to appear to answer the said charge within _____ days, but he has not appeared; and whereas the said _____ is possessed of certain land paying revenue to Government in the village (*or town*) of _____ in the District of _____:

You are hereby authorized and requested to cause the said land to be attached, and to be held under attachment pending the further order of this Court, and to certify without delay what you may have done in pursuance of this order.

Dated this _____ day of _____, 19 ____.

(Seal.)

(Signature.)

SCHEDULE V.—(Continued.)

FORMS—(continued).

VII.—WARRANT IN THE FIRST INSTANCE TO BRING UP A WITNESS.

(See section 90.)

To (name and designation of the Police-officer or other person or persons who is or are to execute the warrant).

WHEREAS complaint has been made before me that of
has (or is suspected to have) committed the offence of (men-
tion the offence concisely), and it appears likely that (name and description
of witness) can give evidence concerning the said complaint; and whereas I
have good and sufficient reason to believe that he will not attend as a
witness on the hearing of the said complaint unless compelled to do so;

This is to authorize and require you to arrest the said (name), and on
the day of to bring him before this Court to be
examined touching the offence complained of

Given under my hand and the seal of the Court, this day of
19 .

(Seal.)

(Signature.)

VIII.—WARRANT TO SEARCH AFTER INFORMATION OF A PARTICULAR OFFENCE.

(See section 96.)

To (name and designation of the Police-officer or other person or persons who is or are to execute the warrant)

WHEREAS information has been laid (or complaint has been made)
before me of the commission (or suspected commission) of the offence of
(mention the offence concisely), and it has been made to appear to me that
the production of (specify the thing clearly) is essential to the inquiry now
being made (or about to be made) into the said offence (or suspected
offence):

This is to authorize and require you to search for the said (the thing
specified) in the (describe the house or place or part thereof to which the
search is to be confined), and, if found, to produce the same forthwith before
this Court returning this warrant, with an endorsement certifying what you
have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of
19 .

(Seal.)

(Signature.)

SCHEDULE V.—(Continued.)

FORMS—(continued).

IX.—WARRANT TO SEARCH SUSPECTED PLACE OF DEPOSIT.

(See section 98.)

To (name and designation of a Police-officer above the rank of a Constable).

WHEREAS information has been laid before me, and, on due inquiry thereupon had, I have been led to believe that the (describe the house or other place) is used as a place for the deposit (or sale) of stolen property (or, if for either of the other purposes expressed in the section, state the purpose in the words of the section):

This is to authorize and require you to enter the said house (or other place) with such assistance as shall be required, and to use, if necessary, reasonable force for that purpose, and to search every part of the said house (or other place, or, if the search is to be confined to a part specify the part clearly), and to seize and take possession of any property (or documents, or stamps or seals, or coins, as the case may be)—Add (when the case requires it) and also of any instruments and materials which you may reasonably believe to be kept for the manufacture of forged documents, or counterfeit stamps, or false seals, or counterfeit coin (as the case may be), and forthwith to bring before this Court such of the said things as may be taken possession of, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day
of , 19 .

(Seal.)

(Signature.)

X—BOND TO KEEP THE PEACE.

(See section 107.)

WHEREAS I (name), inhabitant of (place), have been called upon to enter into a bond to keep the peace for the term of . I hereby bind myself not to commit a breach of the peace, or do any act that may probably occasion a breach of the peace, during the said term, and, in case of my making default therein, I hereby bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of Rupees .

Dated this day of 19

(Signature.)

SCHEDULE V.—(Continued.)

FORMS—(continued).

XI.—BOND FOR GOOD BEHAVIOUR.

(See sections 108, 109, and 110.)

WHEREAS I (name), inhabitant of (place), have been called upon to enter into a bond to be of good behaviour to her Majesty the Queen, Empress of India, and to all her subjects for the term of (state the period). I hereby bind myself to be of good behaviour to her Majesty, and to all her subjects, during the said term, and, in case of my making default therein, I bind myself to forfeit to Her Majesty the sum of Rupees

Dated this day of 19

(Signature.)

(Where a bond with sureties to be executed, add)—We do hereby declare ourselves sureties for the abovenamed that he will be of good behaviour to Her Majesty the Queen Empress of India, and to all her subjects, during the said term, and, in case of his making default therein, we bind ourselves, jointly and severally, to forfeit to Her Majesty the sum of Rupees

Dated this day of 19

(Signature.)

XII.—SUMMONS ON INFORMATION OF A PROBABLE BREACH OF THE PEACE.

(See section 114.)

To of

WHEREAS it has been made to appear to me by credible information that (state the substance of the information), and that you are likely to commit a breach of the peace (or by which act a breach of the peace will probably be occasioned) you are hereby required to attend in person (or by a duly-authorized agent) at the office of the Magistrate of on the day of 19 , at ten o'clock in the forenoon, to show cause why you should not be required to enter into a bond for Rupees [when sureties are required, add—and also to give security by the bond of, one (or two, as the case may be) surety (or sureties) in the sum of Rupees (each if more than one)], that you will keep the peace for the term of

Given under my hand and the seal of the Court, this day of 19

(Seal.)

(Signature.)

SCHEDULE V.—(Continued.)

FORMS—(continued).

XIII.—WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY TO KEEP THE PEACE.

(See section 123.)

To the Superintendent (or Keeper) of the Jail at

WHEREAS (name and address) appeared before me in person (or by his authorized agent) on the day of in obedience to a summons calling upon him to show cause why he should not enter into a bond for Rupees with one surety (or a bond with two sureties each in Rupees), that he, the said (name), would keep the peace for the period of months; and whereas an order was then made requiring the said (name) to enter into and find such security (state the security ordered when it differs from that mentioned in the summons), and he has failed to comply with the said order :

This is to authorize and require you, the said Superintendent (or Keeper), to receive the said (name) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (term of imprisonment) unless he shall in the meantime comply with the said order by himself and his surety (or sureties) entering into the said bond, in which case the same shall be received, and the said (name) released, and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 19 .

(Seal.)

(Signature.)

XIV.—WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY FOR GOOD BEHAVIOUR.

(See section 123.)

To the Superintendent (or Keeper) of the Jail at

WHEREAS it has been made to appear to me that (name and description) has been and is lurking within the District of having no ostensible means of subsistence (or and that he is unable to give any satisfactory account of himself);

or

WHEREAS evidence of the general character or (name and description) has been adduced before me and recorded, from which it appears that he is an habitual robber (or house-breaker, &c., as the case may be):

SCHEDULE V.—(Continued.)

FORMS—(continued).

And whereas an order has been recorded stating the same and requiring the said (*name*) to furnish security for his good behaviour for the term of (*state the period*) by entering into a bond with one surety (*or two or more sureties, as the case may be*), himself for Rupees , and the said surety (*or each of the said sureties*) for Rupees , and the said (*name*) has failed to comply with the said order, and, for such default, has been adjudged imprisonment for (*state the term*) unless the said security be sooner furnished :

This is to authorize and require you the said Superintendent (*or Keeper*), to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*) unless he shall in the meantime comply with the said order by himself and his surety (*or sureties*) entering into the said bond, in which case the same shall be received, and the said (*name*) released, and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court this day of
 , 19 .

(Seal.)

(Signature).

XV.—WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY.

(See sections 123 and 124.)

To the Superintendent (*or Keeper of the Jail at* *or other officer in whose custody the person is*).

WHEREAS (*name and description of prisoner*) was committed to your custody under warrant of the Court dated the day of and has since duly given security under section of the Code of Criminal Procedure ;

and there have appeared to me sufficient grounds for the opinion that he can be released without hazard to the community :

This is to authorize and require you forthwith to discharge the said (*name*) from your custody, unless he is liable to be detained for some other cause.

Given under my hand and the seal of the Court this day of
 , 19 .

(Seal.)

(Signature).

SCHEDULE V.—(Continued.)

FORMS—(continued).

XVI.—ORDER FOR THE REMOVAL OF NUISANCES.

(See section 133.)

To (name, description, and address).

WHEREAS it has been made to appear to me that you have caused an obstruction (or nuisance) to person using the public roadway (or other public place) which, &c. (describe the road or public place), by &c. (state what it is that causes the obstruction or nuisance), and that such obstruction (or nuisance) still exists ;

or

WHEREAS it has been made to appear to me that you are carrying on as owner, or manager, the trade or occupation of (state the particular trade or occupation and the place where it is carried on), and that the same is injurious to the public health (or comfort) by reason (state briefly in what manner the injurious effects are caused), and should be suppressed or removed to a different place ;

or

WHEREAS it has been made to appear to me that you are the owner (or are in possession of, or have the control over) a certain tank (or well or excavation) adjacent to the public way (describe the thoroughfare) and that the safety of the public is endangered by reason of the said tank (or well or excavation) being without a fence (or insecurely fenced) .

or

WHEREAS, &c., &c. (as the case may be) :

I do hereby direct and require you within (state the time allowed) to (state what is required to be done to abate the nuisance) or to appear at in the Court of on the day of next, and to show cause why this order should not be enforced ,

I do hereby direct and require you within (state the time allowed) to cease carrying on the said trade or occupation at the said place, and not again to carry on the same or to remove the said trade from the place where it is now carried on, or to appear, &c. ;

or

I do hereby direct and require you within (state the time allowed) to put up a sufficient fence (state the kind of fence and the part to be fenced), or to appear, &c. ;

I do hereby direct and require you, &c., &c. (as the case may be),

Given under my hand and the seal of the Court, this day of

19 .
(Seal.)

(Signature.)

SCHEDULE V.—(Continued.)

FORMS—(continued).

XVII.—MAGISTRATE'S ORDER CONSTITUTING A JURY.

(See section 138.)

WHEREAS, on the day of , 19 , an order was issued to (name) requiring him (*state the effect of the order*), and whereas the said (name) has applied to me by a petition bearing date the day of , for an order appointing a jury to try whether the said recited order is reasonable and proper; I do hereby appoint (*the names, &c., of the five or more jurors*) to be the jury to try and decide the said question, and do require the said jury to report their decision within days from the date of this order at my office at .

Given under my hand and the seal of the Court, this day of , 19 .

(Seal.)

(Signature.)

XVIII.—MAGISTRATE'S NOTICE AND PEREMPTORY ORDER AFTER THE FINDING BY A JURY.

(See section 140.)

To (name, description, and address).

I HEREBY give you notice that the jury duly appointed on the petition presented by you on the day of have found that the order issued on the day of requiring you (*state substantially the requisition in the order*) is reasonable and proper. Such order has been made absolute, and I hereby direct and require you to obey the said order within (*state the time allowed*) on peril of the penalty provided by the Indian Penal Code for disobedience thereto.

Given under my hand and the seal of the Court, this day of , 19 .

(Seal.)

(Signature.)

XIX.—INJUNCTION TO PROVIDE AGAINST IMMINENT DANGER PENDING INQUIRY BY JURY.

(See section 142.)

To (name, description, and address).

WHEREAS the inquiry by a jury appointed to try whether my order issued on the day of , 19 , is reasonable and proper, is still pending, and it has been made to appear to me that the nuisance

SCHEDULE V.—(*Continued.*)FORMS.—(*continued.*)

I do hereby order you not to place or permit to be placed any of the earth *case* or stones dug from the said land on any part of the said road;

or

I do hereby prohibit the procession passing along the said street, and strictly warn and enjoin you not to take any part in such procession (*or as the case recited may require*).

Given under my hand and the seal of the Court, this day
of , 19 .

(*Seal.*)

(*Signature.*)

XXII.—MAGISTRATE'S ORDER DECLARING PARTY ENTITLED TO RETAIN POSSESSION OF LAND, &c., IN DISPUTE.

(*See section 145.*)

It appearing to me, on the grounds duly recorded, that a dispute likely to induce a breach of the peace, existed between (*describe the parties by name and residence or residence only if the dispute be between bodies of villagers*) concerning certain (*state concisely the subject of dispute*) situate within the local limits of my jurisdiction, all the said parties were called upon to give in a written statement of their respective claims as to the fact of actual possession of the said (*the subject of dispute*), and being satisfied by due inquiry had thereupon without reference to the merits of the claim of either or the said parties to the legal right of possession, that the claim of actual possession by the said (*name or names or description*), is true.

I do decide and declare that he is (*or they are*) in possession of the said (*the subject of dispute*) and entitled to retain such possession until ousted by due course of law and do strictly forbid any disturbance of his (*or their*) possession in the meantime.

Given under my hand and the seal of the Court, this day
of , 19 .

(*Seal.*)

(*Signature.*)

XXIII.—WARRANT OF ATTACHMENT IN THE CASE OF A DISPUTE AS TO THE POSSESSION OF LAND, &c.

(*See section 146.*)

To the Police-officer in charge of the Police-station at
[*or To the Collector of*].

WHEREAS it has been made to appear to me that a dispute likely to induce a breach of the peace existed between (*describe the parties concerned*

SCHEDULE V.—(Continued.)

FORMS—(continued).

XXV.—BOND AND BAIL BOND ON A PRELIMINARY INQUIRY BEFORE A POLICE-OFFICER.

(See section 169.)

I (name), of , being charged with the offence of and after inquiry to appear before the Magistrate of

or

and after inquiry called upon to enter into my own recognizance to appear when required, do hereby bind myself to appear at in the Court of on the day of next (or on such day as I may hereafter be required to attend) to answer further to the said charge, and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of Rupees .

Dated this day of , 19 .

(Signature.)

I hereby declare myself (or we jointly and severally declare ourselves and each of us) surety (or sureties) for the abovesaid that he shall attend at , in the Court of , on the day of next (or on such day as he may hereafter be required to attend), further to answer to the charge pending against him, and, in case of his making default therein, I hereby bind myself (or we hereby bind ourselves) to forfeit to Her Majesty the Queen, Empress of India, the sum of Rupees .

Dated this day of , 19 .

(Signature.)

XXVI.—BOND TO PROSECUTE OR GIVE EVIDENCE.

(See section 170.)

I (name) of (place), do hereby bind myself to attend at in the Court of at o'clock, on the day of next, and then and there to prosecute (or to prosecute and give evidence) (or to give evidence) in the matter of a charge of against one A B, and in case of making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day of , 19 .

(Signature.)

SCHEDULE V.—(Continued.)

FORMS.—(continued).

XXVII.—NOTICE OF COMMITMENT BY MAGISTRATE TO
GOVERNMENT PLEADER.

(See section 218).

THE Magistrate of _____ hereby gives notice that he has committed
one _____ for trial at the next Sessions, and the Magistrate hereby in-
structs the Government Pleader to conduct the prosecution of the said case.
The charge against the accused is, that, etc. (*state the offence as in the
charge*).

Dated this _____ day of _____, 19 ____.

(Signature).

XXVIII—CHARGES.

(See sections 221, 222, 223).

(1.)—CHARGES WITH ONE HEAD.

(a) I, *name and office of Magistrate, etc.*, hereby charge you [*name of
accused person*] as follows:—

(b) That you on or about the _____ day of _____, at _____, waged
war against Her Majesty the Queen, Empress
Of India and thereby committed an offence
punishable under section 121 of the Indian Penal Code, and within the
cognizance of the Court of Session [*when the charge is framed by a Presi-
dency Magistrate, for Court of Session, substitute High Court*].

(c) And I hereby direct that you be tried by the said Court on the said
charge.

[Signature and seal of the Magistrate.]

[To be substituted for (b)]:—

(2) That you, on or about the _____ day of _____, at _____, with
the intention of inducing the Hon'ble A. B.,
On section 124. _____ Member of the Council of the Governor-
General of India, to refrain from exercising a lawful power as such Member,
assaulted such Member, and thereby committed an offence punishable under
section 124 of the Indian Penal Code, and within the cognizance of the
Court of Session [*or High Court*].

(3) That you, being a public servant in the _____ Department,
On section 161. _____ directly accepted from [*state the name*], for
another party [*state the name*], a gratification
other than legal remuneration, as a motive for forbearing to do an official

SCHEDULE V.—(Continued.)

FORMS—(continued).

act, and thereby committed an offence punishable under section 161 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(4) That you, on or about the _____ day of _____, at _____ did [or omitted to do, *as the case may be*] _____, such conduct being contrary to the provisions of Act _____, section _____, and known by you to be prejudicial to _____, and thereby committed an offence punishable under section 156 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(5) That you, on or about the _____ day of _____, at _____, in the _____ course of the trial of _____, before _____, stated in evidence that " _____ " which statement you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(6) That you, on or about the _____ day of _____, at _____, committed culpable homicide not amounting to murder, causing the death of _____, and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(7) That you, on or about the _____ day of _____, at _____, abetted the commission of suicide by A. B., a person in a state of intoxication, and thereby committed an offence punishable under section 306 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(8) That you, on or about the _____ day of _____, at _____, voluntarily caused grievous hurt to _____, and thereby committed an offence punishable under section 325 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(9) That you, on or about the _____ day of _____, at _____, robbed _____ [*state the name*], and thereby committed an offence punishable under section 392 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(10) That you, on or about the _____ day of _____, at _____, committed dacoity, an offence punishable under section 395 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

[In cases tried by Magistrates, substitute "within my cognizance" for "within the cognizance of the Court of Session," and in (c) omit "by the said Court".]

SCHEDULE V.—(Continued.)

FORMS—(continued.)

(II.)—CHARGES WITH TWO OR MORE HEADS.

(a) I [name and office of Magistrate, &c.], hereby charge you [name of accused person] as follows:—

(b) *First*.—That you, on or about the _____ day of _____, at _____, knowing a coin to be counterfeit, delivered the same to another person, by name *A. B.*, as genuine and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

Secondly.—That you, on or about the _____ day of _____, at _____, knowing a coin to be counterfeit, attempted to induce another person by name *A. B.* to receive it as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(c) And I hereby direct that you be tried by the said Court on the said charge.

[Signature and seal of the Magistrate.]

[To be substituted for (b)]:—

(2) *First*.—That you, on or about the _____ day of _____, at _____, committed murder by causing the death of _____, and thereby committed an offence punishable under section 302 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

Secondly.—That you, on or about the _____ day of _____, at _____, by causing the death of _____, committed culpable homicide not amounting to murder, and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(3) *First*.—That you, on or about the _____ day of _____, at _____, committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

Secondly.—That you, on or about the _____ day of _____, at _____, committed theft, having made preparation for causing death to a person in order to the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

Thirdly.—That you, on or about the _____ day of _____, at _____, committed theft, having made preparation for causing restraint to a person in order to the effecting of your escape after the committing of such theft,

SCHEDULE V.—(Continued.)

FORMS—(continued.)

and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

Fourthly.—That you, on or about the _____ day of _____, at _____, committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(4) That you, on or about the _____ day of _____, at _____, in the Alternative charges on sec- course of the inquiry into _____ before tion 193. _____ stated in evidence that " _____ ", and that you, on or about the _____ day of _____, at _____, in the course of the trial of _____, before _____, stated in evidence that " _____ ", one of which statements you either knew or believed to be "false or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code and within the cognizance of the Court of Session [or High Court].

[In cases tried by Magistrates substitute "within my cognizance" for "within the cognizance of the Court of Session" and in (c) omit "by the said Court".]

III.—CHARGE FOR THEFT AFTER PREVIOUS CONVICTION

I (name and office of Magistrate, &c.) hereby charge you (name of accused person) as follows:—

That you, on or about the _____ day of _____, at _____, committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code and within the cognizance of the Court of Session [or ^{High Cou} Magistrate, as the case may be]

And you, the said (name of accused), stand further charged that you, before the committing of the said offence, that is to say, on the _____ day of _____, had been convicted by the (state Court by which conviction was had) at _____ of an offence punishable under Chapter XVII. of the Indian Penal Code with imprisonment for a term of three years that is to say, the offence of house-breaking by night (describe the offence in the words used in the section under which the accused was convicted), which conviction is still in full force and effect, and that you are thereby liable to enhanced punishment under section 75 of the Indian Penal Code.

And I hereby direct that you be tried, &c.

SCHEDULE V.—(Continued.)

FORMS—(continued.)

XXIX.—WARRANT OF COMMITMENT ON A SENTENCE OF IMPRISONMENT OR FINE IF PASSED BY A MAGISTRATE.

(See sections 245 and 258.)

To the Superintendent (or Keeper) of the Jail at .

WHEREAS on the day of , 19 , (name of prisoner) the (1st, 2nd, 3rd, as the case may be) prisoner in case No. of the Calendar for 19 was convicted before me (name and official designation) of the offence of mention the offence or offences concisely under section (or sections) of the Indian Penal Code (or of Act), and was sentenced to (state the punishment fully and distinctly) :

This is to authorize and require you the said Superintendent (or Keeper), to receive the said (prisoner's name) into your custody in the said jail, together with this warrant, and there carry the aforesaid sentence into execution according to law.

Given under my hand and the seal of the Court, this day of
19 .

(Seal.)

(Signature.)

XXX.—WARRANT OF IMPRISONMENT ON FAILURE TO RECOVER AMENDS BY DISTRESS.

(See section 250.)

To the Superintendent (or Keeper) of the Jail at .

WHEREAS (name and description) has brought against (name and description of the accused person) the complaint that (mention it concisely), and the same has been dismissed as frivolous (or vexatious), and the order of dismissal awards payment by the said (name of complainant) of the sum of Rupees as amends; and whereas the said sum has not been paid, and cannot be recovered by distress of the moveable property of the said (name of complainant), and an order has been made for his simple imprisonment in jail for the period of days unless the aforesaid sum be sooner paid :

This is to authorize and require you the said Superintendent (or Keeper), to receive the said (name) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (term of imprisonment), subject to the provisions of section 69 of the Indian Penal Code unless the said sum be sooner paid, and, on the receipt thereof, forthwith to set him at liberty, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of
19 .

(Seal.)

(Signature.)

SCHEDULE V.—(*Continued.*)FORMS—(*continued.*)

XXXI.—SUMMONS TO WITNESS.

(*See sections 68 and 252.*)

To _____ of _____

WHEREAS complaint has been made before me that _____ has (or is suspected to have) committed the offence of (*state the offence concisely with time and place*), and it appears to me that you are likely to give material evidence for the prosecution :

You are hereby summoned to appear before this Court on the _____ day of _____ next at ten o'clock in the forenoon, to testify what you know concerning the matter of the said complaint and not to depart thence without leave of the Court; and you are hereby warned that, if you shall, without just excuse, neglect or refuse to appear on the said date, a warrant will be issued to compel your attendance.

Given under my hand and the seal of the Court, this _____ day of _____ 19 _____ .

(Seal.)

(Signature.)

XXXII.—PRECEPT TO DISTRICT MAGISTRATE TO SUMMON JURORS AND ASSESSORS.

(*See section 326.*)

To the District Magistrate of _____ .

WHEREAS a Criminal Session is appointed to be held in the Court-house at _____ on the _____ day of _____ next, and the names of the persons herein stated have been duly drawn by lot from among those named in the revised list of jurors and assessors furnished to this Court; you are hereby required to summon the said persons to attend at the said Court of Session at 10 A. M., on the said date, and, within such date, to certify that you have done so in pursuance of this Precept.

(*Here enter the names of jurors and assessors.*)

Given under my hand and the seal of the Court, this _____ day of _____ 19 _____ .

(Seal.)

(Signature.)

SCHEDULE V.—(Continued.)

FORMS—(continued.)

XXXIII.—SUMMONS TO ASSESSOR OR JUROR.

(See section 328.)

To (name) of (place.)

PURSUANT to a precept directed to me by the Court of Session of requiring your attendance as an assessor (or a juror) at the next Criminal Session, you are hereby summoned to attend at the said Court of Session at (place) at ten o'clock in the forenoon on the day of next.

Given under my hand and the seal of office, this day of 19 .
(Seal.) (Signature.)

XXXIV.—WARRANT OF COMMITMENT UNDER SENTENCE OF DEATH.

(See section 374.)

To the Superintendent (or Keeper) of the Jail at .

WHEREAS, at the Session held before me on the day of 19 , (name of prisoner) the (1st, 2nd, 3rd, as the case may be) prisoner in case No. of the Calendar at the said Session, was duly convicted of the offence of culpable homicide amounting to murder under section of the Indian Penal Code, and sentenced to suffer death, subject to the confirmation of the said sentence by the Court of :

This is to authorize and require you, the said Superintendent (or Keeper), to receive the said (prisoner's name) into your custody in the said jail, together with this warrant, and him there safely to keep until you shall receive the further warrant or order of this Court, carrying into effect the order of the said Court.

Given under my hand and the seal of the Court, this day of 19

(Seal.)

(Signature.)

XXXV.—WARRANT OF EXECUTION ON A SENTENCE OF DEATH.

(See section 381.)

To the Superintendent (or Keeper) of the Jail at .

WHEREAS (name of prisoner) the (1st, 2nd, 3rd, as the case may be) prisoner in Case No. of the Calendar at the Session held before me on the day of 19 , has been by a warrant of this Court, dated the day of , committed to your custody under sentence of death; and whereas the order of the Court of confirming the said sentence has been received by this Court;

SCHEDULE V.—(Continued.)

FORMS—(continued.)

This is to authorize and require you the said Superintendent [or Keeper], to carry the said sentence into execution by causing the said to be hanged by the neck until he be dead, at (time and place of execution), and to return this warrant to the Court with an endorsement certifying that the sentence has been executed.

Given under my hand and the seal of the Court, this day of ,
19 .
(Seal.) (Signature)

XXXVI.—WARRANT AFTER A COMMUTATION OF A SENTENCE

(See sections 381 and 382.)

To the Superintendent (or Keeper) of the Jail at .

WHEREAS, at a Session held on the day of , 19 (name of prisoner), the (1st, 2nd, 3rd, as the case may be) prisoner in case No. of the Calendar at the said Session, was convicted of the offence of punishable under section of the Indian Penal Code and sentenced to , and was thereupon committed to your custody; and whereas, by the order of the Court of (a duplicate of which is hereunto annexed) the punishment adjudged by the said sentence has been commuted to the punishment of transportation for life (or as the case may be);

This is to authorize and require you, the said Superintendent (or Keeper), safely to keep the said prisoner's name) in your custody in the said jail, as by law is required, until he shall be delivered over by you to the proper authority and custody for the purpose of his undergoing the punishment of transportation under the said order,

or

(if the mitigated sentence is one of imprisonment, say, after the words, "custody in the said jail," "and there to carry into execution the punishment of imprisonment under the said order according to law").

Given under my hand and the seal of the Court, this day of ,
19 .
(Seal.) (Signature.)

XXXVII.—WARRANT TO LEVY A FINE BY DISTRESS AND SALE.

(See sect. on 386.)

To (name and designation of the Police-officer or other person or persons who is or are to execute the warrant).

WHEREAS (name and description of the offender) was, on the day of 19 , convicted before me of the offence of (mention the offence concisely)

SCHEDULE V.—(*Continued.*)FORMS—(*continued.*)

and sentenced to pay a fine of Rupees , and whereas the said (*name*), although required to pay the said fine, has not paid the same or any part thereof :

This is to authorize and require you to make distress by seizure of any moveable property belonging to the said (*name*) which may be found within the district of ; and, if, within (*state the number of days or hours allowed*) next after such distress the said sum shall not be paid (*or forthwith*), to sell the moveable property distrained or so much thereof as shall be sufficient to satisfy the said fine, returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of ,
19 .

(*Seal*)

(*Signature.*)

XXXVIII — WARRANT OF COMMITMENT IN CERTAIN CASES OF CONTEMPT WHEN A FINE IS IMPOSED.

(*See section 480.*)

To the Superintendent (*or Keeper*) of the Jail at .

WHEREAS, at a Court holden before me on this day (*name and description of the offender*), in the presence (*or view*) of the Court, committed wilful contempt ,

And whereas for such contempt the said (*name of offender*) has been adjudged by the Court to pay a fine of Rupees , or in default to suffer simple imprisonment for the space of (*state the number of months or days*) .

This is to authorize and require you, the Superintendent (*or Keeper*) of the said jail, to receive the said (*name of offender*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*); unless the said fine be sooner paid; and, on the receipt thereof, forthwith to set him at liberty, returning this warrant with an endorsement certifying the manner of its execution

Given under my hand and the seal of the Court, this day of ,
19

(*Seal.*)

(*Signature.*)

SCHEDULE V.—(*Continued.*)FORMS—(*continued.*)

XXXIX.—MAGISTRATE'S OR JUDGE'S WARRANT OF COMMITMENT OF WITNESS REFUSING TO ANSWER.

(*See section 485.*)To (*name and designation of officer of Court.*)

WHEREAS (*name and description*), being summoned (*or brought before this Court*) as a witness, and this day required to give evidence on an enquiry into an alleged offence refused to answer a certain question (*or certain questions*) put to him touching the said alleged offence, and duly recorded, without alleging any just excuse for such refusal, and for his contempt has been adjudged detention in custody for (*term of detention adjudged*).

This is to authorize and require you to take the said (*name*) into custody, and him safely to keep in your custody for the space of days unless in the meantime he shall consent to be examined, and to answer the questions asked of him and, on the last of the said days, or forthwith on such consent being known, to bring him before this Court to be dealt with according to law, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of ,
19 .

(*Seal*)(*Signature.*)

XL.—WARRANT OF IMPRISONMENT ON FAILURE TO PAY MAINTENANCE.

(*See section 488.*)To the Superintendent (*or Keeper*) of the Jail at .

WHEREAS (*name, description, and address*) has been proved before me to be possessed of sufficient means to maintain his wife (*name*) [*or his child (name), who is by reason of (state the reason) unable to maintain herself (or himself)*] and to have neglected (*or refused*) to do so, and an order has been duly made requiring the said (*name*) to allow to his said wife (*or child*) for maintenance the monthly sum of Rupees ; and whereas it has been further proved that the said (*name*), in wilful disregard of the said order, has failed to pay Rupees , being the amount of the allowance for the month (*or months*) of , and thereupon an order was made adjudging him to undergo simple (*or rigorous*) imprisonment in the said jail for the period of :

This is to authorize and require you, the said Superintendent (*or Keeper*), to receive the said (*name*) into your custody in the said jail, together

SCHEDULE V.—(Continued.)

FORMS—(continued).

with this warrant, and there carry the said order into execution according to law, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of
19 (Seal) (Signature.)

XL1.—WARRANT TO ENFORCE THE PAYMENT OF MAINTENANCE BY DISTRESS AND SALE.

(See section 488.)

To (name and designation of the Police-officer or other person to execute the warrant).

WHEREAS an order has been duly made requiring (name) to allow to his said wife (or child) for maintenance the monthly sum of Rupees , and whereas the said (name), in wilful disregard of the said order, has failed to pay Rupees , being the amount of the allowance for the month (or months) of :

This is to authorize and require you to make distress by seizure of any moveable property belonging to the said (name) which may be found within the district of and, if, within (state the number of days or hours allowed) next after such distress, the said sum shall not be paid (or forthwith), to sell the moveable property distrained, or so much thereof as shall be sufficient to satisfy the said sum, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of ,
19 (Seal) (Signature.)

XLII.—BOND AND BAIL-BOND ON A PRELIMINARY INQUIRY BEFORE A MAGISTRATE.

(See section 496 and 499.)

I, (name), of (place), being brought before the Magistrate of (as the case may be), charged with the offence of , and required to give security for my attendance in his Court, and at the Court of Session, if required, to bind myself to attend at the Court of the said Magistrate on every day of the preliminary enquiry into the said charge, and, should the case be sent for trial by the Court of Session, to be, and appear, before the

SCHEDULE V.—(*Continued.*)FORMS—(*continued.*)

said Court when called upon to answer the charge against me; and, in case of my making default herein, I bind myself to forfeit, to Her Majesty the Queen, Empress of India, the sum of Rupees .

Dated this day of , 19 .

(*Signature.*)

I hereby declare myself (*or* We jointly and severally declare ourselves and each of us) surety (*or* sureties) for the said (*name*) that he shall attend at the Court of on every day of the preliminary enquiry into the offence charged against him, and should the case be sent for trial by the Court of Session, that he shall be, and appear, before the said Court to answer the charge against him, and in case of his making default therein, I bind myself (*or* we bind ourselves) to forfeit, to Her Majesty the Queen, Empress of India, the sum of Rupees .

Dated this day of , 19 .

(*Signature.*)

**XLIII.—WARRANT TO DISCHARGE A PERSON IMPRISONED ON
FAILURE TO GIVE SECURITY.**

(*See section 500.*)

To the Superintendent (*or* Keeper) of the jail at (*or other officer in whose custody the person is*)

WHEREAS (*name and description of prisoner*) was committed to your custody under warrant of this Court, dated the day of , and has since with his surety (*or* sureties) duly executed a bond under section 409 of the Code of Criminal Procedure :

This is to authorize and require you forthwith to discharge the said (*name*) from your custody, unless he is liable to be detained for some other matter.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*)

(*Signature.*)

XLIV.—WARRANT OF ATTACHMENT TO ENFORCE A BOND.

(*See section 514.*)

To the Police-officer in charge of the Police-station at .

WHEREAS (*name, description, and address of person*) has failed to appear on (*mention the occasion*) pursuant to his recognizance, and has, by such

SCHEDULE V.—(Continued.)

FORMS—(continued).

default, forfeited to Her Majesty the Queen, Empress of India, the sum of Rupees (*the penalty in the bond*); and whereas the said (*name of person*) has on due notice to him failed to pay the said sum or show any sufficient cause why payment should not be enforced against him:

This is to authorize and require you to attach any moveable property of the said (*name*) that you may find within the district of _____, by seizure and detention, and if the said amount be not paid within three days, to sell the property so attached or so much of it as may be sufficient to realize the amount aforesaid, and to make return of what you have done under this warrant immediately upon its execution

Given under my hand and the seal of the Court, this _____ day of _____, 19 _____.

(Seal.)

(Signature, _____)

XLV.—NOTICE TO SURETY ON BREACH OF A BOND.

(See section 514.)

To _____ of _____.

WHEREAS, on the _____ day of _____, 19 _____, you became surety for (*name*) of (*place*) that he should appear before this Court on the _____ day of _____, and bound yourself in default thereof to forfeit the sum of Rupees _____ to Her Majesty the Queen-Empress of India, and whereas the said (*name*) has failed to appear before this Court, and, by reason of such default, you have forfeited the aforesaid sum of Rupees _____.

You are hereby required to pay the said penalty, or show cause within _____ days from this date, why payment of the said sum should not be enforced against you

Given under my hand and the seal of the Court, this _____ day of _____, 19 _____.

(Seal.)

(Signature, _____)

XLVI.—NOTICE TO SURETY OF FORFEITURE OF BOND FOR GOOD BEHAVIOUR.

(See section 514.)

To _____ of _____.

WHEREAS on the _____ day of _____, 19 _____, you became surety by a bond for (*name*) of (*place*) that he would be of good behaviour for the period of _____, and bound yourself in default thereof to forfeit the sum of Rupees _____ to Her Majesty the Queen, Empress of India; and

SCHEDULE V.—(*Continued.*)FORMS—(*continued.*)

whereas the said (*name*) has been convicted of the offence of (*mention the offence concisely*) committed since you became such surety, whereby your security-bond has become forfeited :

You are hereby required to pay the said penalty of Rupees , or to show cause within days why it should not be paid.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*)

(*Signature.*)

XLVII.—WARRANT OF ATTACHMENT AGAINST A SURETY.

(*See section 514.*)

To of .

WHEREAS (*name, description, and address*) has bound himself as surety for the appearance of (*mention the condition of the bond*), and the said (*name*) has made default, and thereby forfeited to Her Majesty the Queen, Empress of India, the sum of Rupees (*the penalty in the bond*);

This is to authorize and require you to attach any moveable property of the said (*name*, which you may find within the district of , by seizure and detention; and, if the said amount be not paid within three days to sell the property so attached, or so much of it as may be sufficient to realize the amount aforesaid, and make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 19 .

(*Seal.*)

(*Signature.*)

XLVIII.—WARRANT OF COMMITMENT OF THE SURETY OF AN ACCUSED PERSON ADMITTED TO BAIL.

(*See section 514.*)

To the Superintendent (*or Keeper*) of the Civil Jail at .

WHEREAS (*name and description of surety*) has bound himself as a surety for the appearance of (*state the condition of the bond*), and the said (*name*) has therein made default, whereby the penalty mentioned in the said bond has been forfeited to Her Majesty the Queen, Empress of India; and whereas the said (*name of surety*) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be

SCHEDULE V.—(Continued.)

FORMS—(continued).

enforced against him, and the same cannot be recovered by attachment and sale of moveable property of his and an order has been made for his imprisonment in the civil jail for *(specify the period)* :

This is to authorize and require you, the said Superintendent (or Keeper) to receive the said *(name)* into your custody with this warrant, and him safely to keep in the said jail for the said *(term of imprisonment)*, and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of
19

(Seal.)

(Signature.)

XLIX.—NOTICE TO THE PRINCIPAL OF FORFEITURE OF A
BOND TO KEEP THE PEACE.

(See section 514.)

To *(name, description, and address)*.

WHEREAS, on the day of , 19 , you entered into a bond not to commit, etc. *(as in the bond)*, and proof of the forfeiture of the same has been given before me and duly recorded :

You are hereby called upon to pay the said penalty of Rupees , or to show cause before me within days why payment of the same should not be enforced against you.

Dated this day of 19

(Seal.)

(Signature.)

L.—WARRANT TO ATTACH THE PROPERTY OF THE PRINCIPAL
ON BREACH OF A BOND TO KEEP THE PEACE.

(See section 514.)

To *(name and designation of Police-officer)* at the Police-station of .

WHEREAS *(name and description)* did, on the day of , 19 , enter into a bond for the sum of Rupees , binding himself not to commit a breach of the peace, etc. *(as in the bond)*, and proof of the forfeiture of the said bond has been given before me and duly recorded ; and whereas notice has been given to the said *(name)* calling upon him to show cause why the said sum should not be paid, and he has failed to do so, or to pay the said sum ;

SCHEDULE V.—(*Concluded.*)FORMS—(*Concluded.*)

me and duly recorded of the commission by the said (*name*) of the offence of _____ whereby the said bond has been forfeited; and whereas notice has been given to the said (*name*), calling upon him to show cause why the said sum should not be paid, and he has failed to do so, or to pay the said sum:

This is to authorize and require you to attach by seizure moveable property belonging to the said (*name*); to the value of Rupees _____ which you may find within the district of _____, and, if the said sum be not paid within _____, to sell the property so attached or so much of it as may be sufficient to realize the same and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this _____ day of _____, 19____.

(*Seal.*) _____ (*Signature.*)

LIII.—WARRANT OF IMPRISONMENT ON FORFEITURE OF BOND FOR GOOD BEHAVIOUR.

(*See section 514.*)

To the Superintendent (*or* Keeper) of the Civil jail at _____.

WHEREAS (*name, description, and address*) did, on the _____ day of _____, 19____, give security by bond in the sum of Rupees _____ for the good behaviour of (*name &c. of the principal*), and proof of the breach of the said bond has been given before me and duly recorded, whereby the said (*name*) has forfeited to her Majesty the Queen Empress of India the sum of Rupees _____, and whereas he has failed to pay the said sum or to show cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property and an order has been made for the imprisonment of the said (*name*) in the civil jail for the period of (*term of imprisonment*):

This is to authorize and require you, the Superintendent (*or* Keeper), to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*), returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this _____ day of _____, 19____.

(*Seal.*) _____ (*Signature.*)

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THE
CODE OF CIVIL PROCEDURE

BEING

ACT NO. V. OF 1908.

TOGETHER WITH

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**A COMPARATIVE TABLE SHOWING THE SECTIONS OF
ACT XIV. OF 1882 CORRESPONDING TO THE SEC-
TIONS AND RULES OF ACT V. OF 1908.**

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"Govt. pleader"	2 (7)	
"Collector"	Omitted	
"decree"	2 (2).	
"order"	2 (14).	
"judgment"	2 (9).	
"judge"	2 (8).	
"judgment-debtor"	2 (10).	
"decree-holder"	2 (3).	
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"signed"	2 (20).	
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8	8.	
9	Omitted.	
10	Omitted.	
11	9.	
12	10.	
13	11.	
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107	" r. 12.
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THE
CODE OF CIVIL PROCEDURE.
ACT NO. V. OF 1908.

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THE CODE OF CIVIL PROCEDURE.

ACT NO. V. OF 1908.

RECEIVED THE G.-G.'S ASSENT ON THE 21ST MARCH, 1908.

An Act to consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature.

WHEREAS it is expedient to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature; It is hereby enacted as follows :—

PRELIMINARY.

Short title, commencement and extent.

1. (1) This Act may be cited as the Code of Civil Procedure, 1908.

(2) It shall come into force on the first day of January, 1909.

(3) This section and sections 155 and 158 extend to the whole of British India: the rest of the Code extends to the whole of British India, except the Scheduled Districts.

Definitions.

2. In this act, unless there is anything repugnant in the subject or context,—

(1) "Code" includes rules :

(2) "decree" means the formal expression of an adjudication which so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 47 or section 144, but shall not include—

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation.—A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed

of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final :

(3) "decree-holder" means any person in whose favour a decree has been passed or an order capable of execution has been made :

(4) "district" means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a "District Court"), and includes the local limits of the ordinary original civil jurisdiction of a High Court :

(5) "foreign Court" means a Court situate beyond the limits of British India which has no authority in British India and is not established or continued by the Governor-General in Council :

(6) "foreign judgment" means the judgment of a foreign Court :

(7) "Government Pleader" includes any officer appointed by the local Government to perform all or any of the functions expressly imposed by this Code on the Government Pleader and also any pleader acting under the directions of the Government Pleader :

(8) "Judge" means the presiding officer of a Civil Court :

(9) "judgment" means the statement given by the Judge of the grounds of a decree or order :

(10) "judgment-debtor" means any person against whom a decree has been passed or an order capable of execution has been made :

(11) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued :

(12) "mesne profits" of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession :

(13) "moveable property" includes growing crops :

(14) "order" means the formal expression of any decision of a Civil Court which is not a decree :

(15) "pleader" means any person entitled to appear and plead for another in Court, and includes an advocate, a vakil and an attorney of a High Court :

(16) "prescribed" means prescribed by rules :

(17) "public officer" means a person falling under any of the following descriptions, namely ;—

- (a) every Judge ;
- (b) every member of the Indian Civil Service ;
- (c) every commissioned and gazetted officer in the military or naval forces of his Majesty, including His Majesty's Indian Marine Service, while serving under the Government ;
- (d) every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order, in the Court, and every person especially authorized by a Court of Justice to perform any of such duties ;
- (e) every person who holds any office by virtue of which he is empowered to place or keep any person in confinement ;
- (f) every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience ;
- (g) every officer whose duty it is, as such officer, to take receive, keep or expend any property on behalf of the Government, or to make any survey, assessment, or contract on behalf of the Government, or to execute any revenue-process, or to investigate, or to report on, any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government ; and

(k) every officer in the service of pay of the Government, or remunerated by fees or commission for the performance of any public duty :

(18) "rules" means rules and forms contained in the First Schedule or made under section 122 or section 125 :

(19) "share in a corporation" shall be deemed to include stock, debenture stock, debentures or bonds : and

(20) "signed," save in the case of a judgment or decree, includes stamped.

3. For the purposes of this Code, the District Court is Subordinate to the High Court, and every Civil Court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court and District Court.

4. (1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.

(2) In particular and without prejudice to the generality of the proposition contained in sub-section (1), nothing in this Code shall be deemed to limit or otherwise affect any remedy which a landholder or landlord may have under any law for the time being in force for the recovery of rent of agricultural land from the produce of such land.

5. (1) Where any Revenue Courts are governed by the provisions of this Code in those matters of procedure upon which any special enactment applicable to them is silent, the local government, with the previous sanction of the Governor-General in Council, may, by notification in the local official Gazette, declare that any portions of those provisions which are not expressly made applicable by this Code shall not apply to those Courts or shall only apply to them with such modifications as the Local Government, with the sanction aforesaid, may prescribe.

(2) "Revenue Court" in sub-section (1) means a Court having jurisdiction under any local law to entertain suits or other proceedings relating to the rent, revenue or profits of land used for

agricultural purposes, but does not include a Civil Court having original jurisdiction under this Code to try such suits or proceedings as being suits or proceedings of a civil nature.

6. Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give Pecuniary jurisdiction. any Court jurisdiction over suits the amount or value of the subject-matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction.

7. The following provisions shall not extend to Courts constituted under the Provincial Small Causes Courts Act, 1887,* or to Courts exercising the jurisdiction of a Court of Small Causes under that Act, that is to say,—

(a) so much of the body of the Code as relates to—

- (i) suits excepted from the cognizance of a Court of Small Causes ;
- (ii) the execution of decrees in such suits ;
- (iii) the execution of decrees against immoveable property ; and

(b) the following sections, that is to say,—

section 9,

sections 91 and 92,

sections 94 and 95 so far as they relate to injunctions and interlocutory orders, and

sections 96 to 112 and 115.

8. Save as provided in sections 24, 38 to 41, 75, clauses (a), (b) and (c), 76, 77 and 155 to 158. Presidency Small Cause Courts. and by the Presidency Small Cause Courts Act, 1882,† the provisions in the body of this Code shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras and Bombay.

* Act IX. of 1887.

† Act XV. of 1882.

PART I.

SUITS IN GENERAL.

JURISDICTION OF THE COURTS AND RES JUDICATA.

9. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation.—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

10. No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in British India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of British India established or continued by the Governor-General in Council and having like jurisdiction, or before His Majesty in Council.

Explanation.—The pendency of a suit in a foreign Court does not preclude the Courts in British India from trying a suit founded on the same cause of action.

11. No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.—The expression “former suit” shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II.—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI.—Where persons litigate *bonâ fide* in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

12. Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any Court to which this Code applies.

13. A foreign judgment shall be conclusive as to any matter
When foreign judgment thereby directly adjudicated upon be-
 not conclusive. between the same parties or between parties
 under whom they or any of them claim litigating under the same
 title except—

- (a) where it has not been pronounced by a Court of competent jurisdiction ;
- (b) where it has not been given on the merits of the case ;
- (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of British India in cases in which such law is applicable ;
- (d) where the proceedings in which the judgment was obtained are opposed to natural justice ;
- (e) where it has been obtained by fraud ;
- (f) where it sustains a claim founded on a breach of any law in force in British India.

14. The Court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction.

PLACE OF SUING.

Court in which suits to be instituted.

15. Every suit shall be instituted in the Court of the lowest grade competent to try it.

Suits to be instituted where subject-matter situate.

16. Subject to the pecuniary or other limitations prescribed by any law, suits—

- (a) for the recovery of immoveable property with or without rent or profits,
- (b) for the partition of immoveable property,
- (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immoveable property,
- (d) for the determination of any other right to or interest in immoveable property,
- (e) for compensation for wrong to immoveable property,
- (f) for the recovery of moveable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immoveable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation.—In this section “property” means property situate in British India.

17. Where a suit is to obtain relief respecting, or compensation for wrong to, immoveable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate :

Suits for immoveable property situate within jurisdiction of different Courts.

Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court.

18. (1) Where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts any immoveable property is situate, any one of those Courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the local limits of its jurisdiction :

Place of institution of suit where local limits of jurisdiction of courts are uncertain.

Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court.

(2) Where a statement has not been recorded under subsection (1), and an objection is taken before an appellate or revisional Court that a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the appellate or revisional Court shall not allow the objection unless in its opinion there was, at the time of the institution of the suit, no reasonable ground for uncertainty as to the Court having jurisdiction with respect thereto and there has been a consequent failure of justice.

19. Where a suit is for compensation for wrong done to the person or to moveable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.

Suits for compensation for wrongs to person or moveables.

Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court.

Illustrations.

(a) A, residing in Delhi, beats B in Calcutta. B may sue A either in Calcutta or in Delhi.

(b) A, residing in Delhi, publishes in Calcutta statements defamatory of B. B may sue A either in Calcutta or in Delhi

Other suits to be instituted where defendants reside or cause of action arises.

20. Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—

- (a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or
- (b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or
- (c) the cause of action, wholly or in part, arises.

Explanation I.—Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.

Explanation II.—A corporation shall be deemed to carry on business at its sole or principal office in British India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Illustrations.

(a) A is a tradesman in Calcutta. B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause of action has arisen, or in Delhi, where B carries on business.

(b) A resides at Simla, B at Calcutta and C at Delhi. A, B and C being together at Benares, B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C at Benares, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Delhi, where C resides: but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the Court.

21. No objection as to the place of suing shall be allowed by any appellate or revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

22. Where a suit may be instituted in any one of two or more Courts and is instituted in one of such Courts, any defendant, after notice to the other parties may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to have the suit transferred to another Court, and the Court to which such application is made, after considering the objections of the other parties (if any), shall determine in which of the several Courts having jurisdiction the suit shall proceed.

23 (1) Where the several Courts having jurisdiction are subordinate to the same Appellate Court, an application under section 22 shall be made to the Appellate Court.

(2) Where such Courts are subordinate to different Appellate Courts but to the same High Court, the application shall be made to the said High Court.

(3) Where such Courts are subordinate to different High Courts, the application shall be made to the High Court within the local limits or whose jurisdiction the Court in which the suit is brought is situate.

24. (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage—

- (a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or
- (b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and
- (2) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section, Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court.

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

25 (1) Where any party to a suit, appeal or other proceeding pending in a High Court presided in Council to transfer suit. Power of Governor-General over by a single Judge objects to its being heard by him and the Judge is satisfied that there are reasonable grounds for the objection, he shall make a report to the Governor-General in Council, who may, by notification in the Gazette of India, transfer such suit, appeal or proceeding to any other High Court.

(2) The law applicable to any suit, appeal or proceeding so transferred shall be the law which the Court in which the suit, appeal or proceeding was originally instituted ought to have applied to such case.

INSTITUTION OF SUITS.

26. Every suit shall be instituted by the presentation of a complaint or in such other manner as may be prescribed.

Institution of suits.

SUMMONS AND DISCOVERY.

27. Where a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and may be served in manner prescribed.

Summons to defendant.

28. (1) A summons may be sent for service in another province to such Court and in such manner as may be prescribed by rules in force in that province.

Service of summons where defendant resides in another province.

(2) The Court to which such summons is sent shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue together with the record (if any) of its proceedings with regard thereto.

29. Summonses issued by any Civil or Revenue Court situate beyond the limits of British India may be sent to the Courts in British India and served as if they had been issued by such Courts:

Service of foreign summonses.

Provided that the Courts issuing such summonses have been established or continued by the authority of the Governor-General in Council, or that the Governor-General in Council has, by notification in the Gazette of India, declared the provisions of this section to apply to such Courts.

30. Subject to such conditions and limitations as may be prescribed, the Court may, at any time, either of its own motion or on the application of any party,—

Power to order discovery and the like.

(a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;

(b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;

(c) order any fact to be proved by affidavit.

31. The provisions in sections 27, 28 and 29 shall apply to summonses to give evidence or to produce documents or other material objects.

Summons to witness.

32. The Court may compel the attendance of any person to whom a summons has been issued under section 30 and for that purpose may—

Penalty for default.

- (a) issue a warrant for his arrest;
- (b) attach and sell his property;
- (c) impose a fine upon him not exceeding five hundred rupees;
- (d) order him to furnish security for his appearance and in default commit him to the civil prison.

JUDGMENT AND DECREE.

23. The Court, after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow.

INTEREST.

34. (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

(2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie.

COSTS.

35. (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the Court has no jurisdiction to try the suit shall be no bar to the exercise of such powers.

(2) Where the Court directs that any costs shall not follow the event, the Court shall state its reasons in writing.

(3) The Court may give interest on costs at any rate not exceeding six per cent. per annum, and such interest shall be added to the costs and shall be recoverable as such.

PART II.

EXECUTION.

GENERAL.

36. The provisions of this Code relating to the execution of decrees shall, so far as they are applicable, be deemed to apply to the execution of orders.

Application to orders.

37. The expression "Court which passed a decree," or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include,—

Definition of Court which passed a decree.

- (a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and
- (b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

COURTS BY WHICH DECREES MAY BE EXECUTED.

38. A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.

Court by which decree may be executed.

39. (1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court,—

Transfer of decree.

- (a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or

- (b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or
 - (c) if the decree directs the sale or delivery of immoveable property situate outside the local limits of the jurisdiction of the Court which passed it, or
 - (d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.
- (2) The Court which passed a decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.

40. Where a decree is sent for execution in another province, it shall be sent to such Court and executed in such manner as may be prescribed by rules in force in that province.

41. The Court to which a decree is sent for execution shall certify to the Court which passed it the fact of such execution, or where the former Court fails to execute the same the circumstances attending such failure.

42. The Court executing a decree sent to it shall have the same powers in executing such decree as it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

43. Any decree passed by a Civil Court established in any part of British India to which the provisions relating to execution do not extend, or by any Court established or continued by the authority of the Governor-General in Council in the territories of any foreign Prince or State, may, if it cannot be executed within the jurisdiction of the Court by which it was passed, be executed in manner herein provided within the jurisdiction of any Court in British India.

44. The Governor-General in Council may, by notification in the Gazette of India, declare that the Execution of decrees passed by Courts of native States. decrees of any Civil or Revenue Courts situate in the territories of any native Prince or State in alliance with His Majesty and not established or continued by the authority of the Governor-General in Council, or any class of such decrees, may be executed in British India, as if they had been passed by the Courts of British India.

45. So much of the foregoing sections of this Part as empower a Court to send a decree for execution to another Court shall be construed as empowering a Court in British India to send a decree for execution to any Court established or continued by the authority of the Governor-General in Council in the territories of any foreign Prince or State to which the Governor-General in Council has, by notification in the Gazette of India, declared this section to apply.

46. (1) Upon the application of the decree-holder the Court which passed the decree may, whenever it thinks fit, issue a precept to any other Court which would be competent to execute such decree to attach any property belonging to the judgment-debtor and specified in the precept.

(2) The Court to which a precept is sent shall proceed to attach the property in the manner prescribed in regard to the attachment of property in execution of a decree :

Provided that no attachment under a precept shall continue for more than two months unless the period of attachment is extended by an order of the Court which passed the decree : unless before the determination of such attachment the decree has been transferred to the Court by which the attachment has been made and the decree-holder has applied for an order for the sale of such property.

QUESTIONS TO BE DETERMINED BY COURT EXECUTING DECREE.

47. (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(2) The Court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit or a suit as a proceeding and may, if necessary, order payment of any additional court-fees.

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

Explanation.—For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed, are parties to the suit.

LIMIT OF TIME FOR EXECUTION.

48. (1) Where an application to execute a decree not being Execution barred in certain cases. a decree granting an injunction has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of twelve years from—

(a) the date of the decree sought to be executed, or,

(b) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree.

(2) Nothing in this section shall be deemed—

(a) to preclude the Court from ordering the execution of a decree upon an application presented after the expiration of the said term of twelve years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at sometime within twelve years immediately before the date of the application; or

(b) to limit or otherwise affect the operation of article 180 of the second schedule to the Indian Limitation Act, 1877.*

* Act XV. of 1877.

TRANSFEREES AND LEGAL REPRESENTATIVES.

49. Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder.

50. (1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.

(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.

PROCEDURE IN EXECUTION.

51. Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree—

- (a) by delivery of any property specifically decreed;
- (b) by attachment and sale or by sale without attachment of any property;
- (c) by arrest and detention in prison;
- (d) by appointing a receiver; or
- (e) in such other manner as the nature of the relief granted may require.

52. (1) Where a decree is passed against a party as the legal representative of a deceased person, and the decree is for the payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property.

(2) Where no such property remains in the possession of the judgment-debtor and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come

into his possession, the decree may be executed against the judgment-debtor to the extent of the property in respect of which he has failed so to satisfy the Court in the same manner as if the decree had been against him personally.

53. For the purposes of section 50 and section 52, property in the hands of a son or other descendant which is liable under Hindu law for the payment of the debt of a deceased ancestor, in respect of which a decree has been passed, shall be deemed to be property of the deceased which has come to the hands of the son or other descendant as his legal representative.

54 Where the decree is for the partition of an undivided estate assessed to the payment of revenue to the Government or for the separate possession of a share of such an estate, the partition or the separation of the share shall be made by the Collector or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition, or the separate possession of shares, of such estates.

ARREST AND DETENTION.

55. (1) A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall, as soon as practicable, be brought before the Court, and his detention may be in the civil prison of the district in which the Court ordering the detention is situate, or, where such civil prison does not afford suitable accommodation, in any other place which the Local Government may appoint for the detention of persons ordered by the Courts of such district to be detained:

Provided, firstly, that, for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset and before sunrise:

Provided, secondly, that no outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the officer authorized to make the arrest has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe the judgment-debtor is to be found:

Provided, thirdly, that, if the room is in the actual occupancy of a woman who is not the judgment-debtor and who according to the customs of the country does not appear in public, the officer authorized to make the arrest shall give notice to her that she is at liberty to withdraw, and, after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, may enter the room for the purpose of making the arrest :

Provided, fourthly, that, where the decree in execution of which a judgment-debtor is arrested, is a decree for the payment of money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

(2) The Local Government may, by notification in the local official Gazette, declare that any person or class of persons whose arrest might be attended with danger or inconvenience to the public shall not be liable to arrest in execution of a decree otherwise than in accordance with such procedure as may be prescribed by the Local Government in this behalf.

(3) Where a judgment-debtor is arrested in execution of a decree for the payment of money and brought before the Court, the Court shall inform him that he may apply to be declared an insolvent, and that he will be discharged if he has not committed any act of bad faith regarding the subject of the application and if he complies with the provisions of the law of insolvency for the time being in force.

(4) Where a judgment-debtor expresses his intention to apply to be declared an insolvent and furnishes security, to the satisfaction of the Court, that he will within one month so apply, and that he will appear, when called upon, in any proceeding upon the application or upon the decree in execution of which he was arrested, the Court shall release him from arrest, and, if he fails so to apply and to appear, the Court may either direct the security to be realized or commit him to the civil prison in execution of the decree.

56. Notwithstanding anything in this Part, the Court shall not order the arrest or detention in the civil prison of a woman in execution of a decree for the payment of money.

Prohibition of arrest or detention of women in execution of decree for money.

57. The Local Government may fix scales, graduated according to rank, race and nationality, of monthly allowances payable for the subsistence of judgment-debtors.

Subsistence-allowance.

Detention and release.

58. (1) Every person detained in the civil prison in execution of a decree shall be so detained,—

- (a) where the decree is for the payment of a sum of money exceeding fifty rupees, for a period of six months, and,
- (b) in any other case, for a period of six weeks :

Provided that he shall be released from such detention before the expiration of the said period of six months or six weeks, as the case may be,—

- (i) on the amount mentioned in the warrant for his detention being paid to the officer in charge of the civil prison, or
- (ii) on the decree against him being otherwise fully satisfied, or
- (iii) on the request of the person on whose application he has been so detained, or
- (iv) on the omission by the person, on whose application he has been so detained, to pay subsistence-allowance :

Provided, also, that he shall not be released from such detention under clause (ii) or clause (iii), without the order of the Court.

(2) A judgment-debtor released from detention under this section shall not merely by reason of his release be discharged from his debt, but he shall not be liable to be re-arrested under the decree in execution of which he was detained in the civil prison.

59. (1) At any time after a warrant for the arrest of a judgment-debtor has been issued the Court may cancel it on the ground of his serious illness.

(2) Where a judgment-debtor has been arrested, the Court may release him if, in its opinion, he is not in a fit state of health to be detained in the civil prison.

(3) Where a judgment-debtor has been committed to the civil prison, he may be released therefrom—

- (a) by the Local Government, on the ground of the existence of any infectious or contagious disease, or

(b) by the committing Court, or any Court to which that Court is subordinate, on the ground of his suffering from any serious illness.

(4) A judgment-debtor released under this section may be re-arrested, but the period of his detention in the civil prison shall not in the aggregate exceed that prescribed by section 58.

ATTACHMENT.

60. (1) The following property is liable to attachment and sale in execution of a decree, namely, Property liable to attachment and sale in execution of decree. lands, houses or other buildings, goods, money, banknotes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, moveable or immoveable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf :

Provided that the following particulars shall not be liable to such attachment or sale, namely :—

- (a) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman ;
- (b) tools of artisans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section ;
- (c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him ;
- (d) books of account ;

- (e) a mere right to sue for damages ;
- (f) any right of personal service ;
- (g) stipends and gratuities allowed to pensioners of the Government, or payable out of any service family pension fund notified in the *Gazette of India* by the Governor-General in Council in this behalf, and political pensions ;
- (h) allowances (being less than salary) of any public officer or of any servant of a railway company or local authority while absent from duty ;
- (i) the salary or allowances equal to salary of any such public officer or servant as is referred to in clause (h), while on duty, to the extent of—
 - (i) the whole of the salary, where the salary does not exceed twenty rupees monthly ;
 - (ii) twenty rupees monthly, where the salary exceeds twenty rupees and does not exceed forty rupees monthly ; and
 - (iii) one moiety of the salary in any other case ;
- (j) the pay and allowances of persons to whom the Indian Articles of War* apply ;
- (k) all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, 1897,† for the time being applies in so far as they are declared by the said Act not to be liable to attachment ;
- (l) the wages of labourers and domestic servants whether payable in money or in kind ;
- (m) an expectancy of succession by survivorship or other merely contingent or possible right or interest ;
- (n) a right to future maintenance ;
- (o) any allowance declared by any law passed under the Indian Councils Acts, 1861‡ and 1892,§ to be exempt from liability to attachment or sale in execution of a decree ; and,

* Act V. of 1869.
 † Act IX. of 1897.

‡ 24 & 25 Vict., c. 67.
 § 55 & 56 Vict., c. 14.

- (*p*) where the judgment-debtor is a person liable for the payment of land-revenue, any moveable property which, under any law for the time being applicable to him is exempt from sale for the recovery of an arrear of such revenue.

Explanation.—The particulars mentioned in clauses (*g*), (*h*), (*i*), (*j*), (*l*) and (*o*) are exempt from attachment or sale whether before or after they are actually payable.

(2) Nothing in this section shall be deemed—

- (a) to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building, site or land, or
- (b) to affect the provisions of the Army Act* or of any similar law for the time being in force.

51. The Local Government, with the previous sanction of the Governor-General in Council, may, by general or special order published in the local official Gazette, declare that such portion of agricultural produce, or of any class of agricultural produce, as may appear to the Local Government to be necessary for the purpose of providing until the next harvest for the due cultivation of the land and for the support of the judgment-debtor and his family shall, in the case of all agriculturists or of any class of agriculturists, be exempted from liability to attachment or sale in execution of a decree.

62. (1) No person executing any process under this Code directing or authorizing seizure of moveable property shall enter any dwelling-house after sunset and before sunrise.

(2) No outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the person executing any such process has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe any such property to be.

(3) Where a room in a dwelling-house is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the person executing the process shall give notice to such woman that she is at liberty to withdraw; and, after allowing reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

63. (1) Where property not in the custody of any Court is under attachment in execution of decrees of more Courts than one, the Court which shall receive or realize such property and shall determine any claim thereto and any objection to the attachment thereof shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached.

(2) Nothing in this section shall be deemed to invalidate any proceeding taken by a Court executing one of such decrees.

64. Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment.

Explanation.—For the purposes of this section, claims enforceable under an attachment include claims for the rateable distribution of assets.

Sale.

65. Where immoveable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute.

(1) **66.** No suit shall be maintained against any person claiming title under a purchase certified by the Court in such manner as may be prescribed on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims.

(2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser on the ground that it is liable to satisfy a claim of such third person against the real owner.

67. The Local Government, with the previous sanction of the Governor-General in Council, may, by notification in the local official Gazette, make rules for any local area imposing conditions in respect of the sale of any class of interests in land in execution of decrees for the payment of money, where such interests are so uncertain or undetermined as, in the opinion of the Local Government, to make it impossible to fix their value.

DELEGATION TO COLLECTOR OF POWER TO EXECUTE DECREES AGAINST IMMOVEABLE PROPERTY.

68. The Local Government may, with the previous sanction of the Governor-General in Council, declare, by notification in the local official Gazette, that in any local area the execution of decrees in cases in which a Court has ordered any immoveable property to be sold, or the execution of any particular kind of such decrees, or the execution of decrees ordering the sale of any particular kind of, or interest in, immoveable property, shall be transferred to the Collector.

69. The provisions set forth in the Third Schedule shall apply to all cases in which the execution of a decree has been transferred under the last preceding section.

Rules of procedure.

70. (1) The Local Government may make rules consistent with the aforesaid provisions—

- (a) for the transmission of the decree from the Court to the Collector, and for regulating the procedure of the Collector and his subordinates in executing the same, and for re-transmitting the decree from the Collector to the Court;

(b) conferring upon the Collector, or any gazetted subordinate of the Collector all or any of the powers which the Court might exercise in the execution of the decree if the execution thereof had not been transferred to the Collector;

(c) providing for orders made by the Collector or any gazetted subordinate of the Collector, or orders made on appeal with respect to such orders, being subject to appeal to, and revision by, superior revenue-authorities as nearly as may be as the orders made by the Court, or orders made on appeal with respect to such orders, would be subject to appeal to, and revision by, appellate or revisional Courts under this Code or other law for the time being in force if the decree had not been transferred to the Collector.

(2) A power conferred by rules made under sub-section (1) upon the Collector or any gazetted subordinate of the Collector, or upon any appellate or revisional authority, shall not be exercisable by the Court or by any Court in exercise of any appellate or revisional jurisdiction which it has with respect to decrees or orders of the Court.

71. In executing a decree transferred to the Collector under section 68 the Collector and his sub-ordinates shall be deemed to be acting judicially.

72. (1) Where in any local area in which no declaration under section 68 is in force the property attached consists of land or of a share in land, and the Collector represents to the Court that the public sale of the land or share is objectionable and that satisfaction of the decree may be made within a reasonable period by a temporary alienation of the land or share, the Court may authorize the Collector to provide for such satisfaction in the manner recommended by him instead of proceeding to a sale of the land or share.

(2) In every such case the provisions of sections 69 to 71 and of any rules made in pursuance thereof shall apply so far as they are applicable.

DISTRIBUTION OF ASSETS.

73. (1) Where assets are held by a Court and more persons than one have, before the receipt of such proceeds of execution-sale to be rateably distributed among decree-holders. assets, made application to the Court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realization, shall be rateably distributed among all such persons :

Provided as follows :—

- (a) where any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not be entitled to share in any surplus arising from such sale ;
- (b) where any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the consent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same interest in the proceeds of the sale as he had in the property sold ;
- (c) where any immoveable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied—
 - first, in defraying the expenses of the sale ;
 - secondly, in discharging the amount due under the decree ;
 - thirdly, in discharging the interest and principal monies due on subsequent incumbrances (if any) ; and,
 - fourthly, rateably among the holders of decrees for the payment of money against the judgment-debtor, who have, prior to the sale of the property, applied to the Court which passed the decree ordering such sale for execution of such decrees, and have not obtained satisfaction thereof.

(2) Where all or any of the assets liable to be rateably distributed under this section are paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

(3) Nothing in this section affects any right of the Government.

RESISTANCE TO EXECUTION.

74. Where the Court is satisfied that the holder of a decree for the possession of immoveable property or that the purchaser of immoveable property sold in execution of a decree has been resisted or obstructed in obtaining possession of the property by the judgment-debtor or some person on his behalf and that such resistance or obstruction was without any just cause, the Court may, at the instance of the decree-holder or purchaser, order the judgment-debtor or such other person to be detained in the civil prison for a term which may extend to thirty days and may further direct that the decree-holder or purchaser be put into possession of the property.

PART III.

INCIDENTAL PROCEEDINGS.

COMMISSIONS.

Power of Court to issue commissions.

75. Subject to such conditions and limitations as may be prescribed the Court may issue a commission—

- (a) to examine any person ;
- (b) to make a local investigation ;
- (c) to examine or adjust accounts ; or
- (d) to make a partition.

76. (1) A commission for the examination of any person may be issued to any Court (not being a High Court) situate in a province other than the province in which the Court of issue is situate and having jurisdiction in the place in which the person to be examined resides.

(2) Every Court receiving a commission for the examination of any person under sub-section (1) shall examine him or cause him to be examined pursuant thereto, and the commission, when it has been duly executed, shall be returned together with the evidence taken under it to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order.

77. In lieu of issuing a commission the Court may issue a letter of request to examine a witness residing at any place not within British India.

Letter of request.

78. The provisions as to the execution and return of commissions issued by foreign Courts. shall apply to commissions issued by—

- (a) Courts situate beyond the limits of British India and established or continued by the authority of His Majesty or of the Governor-General in Council, or
- (b) Courts situate in any part of the British Empire other than British India, or
- (c) Courts of any foreign country for the time being in alliance with His Majesty.

PART IV.

SUITS IN PARTICULAR CASES.

SUITS BY OR AGAINST THE GOVERNMENT OR PUBLIC OFFICERS IN THEIR OFFICIAL CAPACITY.

79. (1) Suits by or against the Government shall be instituted by or against the Secretary of State for India in Council.

Suits by or against Government.

(2) Nothing in this section shall be deemed to limit or otherwise affect any information exhibited by the Advocate-General in exercise of the power declared by section 111 of the East India Company Act, 1813.*

80. No suit shall be instituted against the Secretary of State for India in Council, or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been, in the case of the Secretary of State in Council, delivered to, or left at the office of, a Secretary to the Local Government or the Collector of the district, and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name,

Notice.

* 33 Geo. 3, c. 155.

description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

81. In a suit instituted against a public officer in respect of any act purporting to be done by him in his official capacity—
Exemption from arrest and of any act purporting to be done by personal appearance.

(a) the defendant shall not be liable to arrest nor his property to attachment otherwise than in execution of a decree, and,

(b) where the Court is satisfied that the defendant cannot absent himself from his duty without detriment to the public service, it shall exempt him from appearing in person.

82. (1) Where the decree is against the Secretary of State for India in Council or against a public officer in respect of any such act as aforesaid, a time shall be specified in the decree within which it shall be satisfied; and, if the decree is not satisfied within the time so specified, the Court shall report the case for the orders of the Local Government.

(2) Execution shall not be issued on any such decree unless it remains unsatisfied for the period of three months computed from the date of such report.

SUITS BY ALIENS AND BY OR AGAINST FOREIGN AND NATIVE RULERS.

83. (1) Alien enemies residing in British India with the permission of the Governor-General in Council, and alien friends, may sue in the Courts of British India, as if they were subjects of His Majesty.

(2) No alien enemy residing in British India without such permission, or residing in a foreign country, shall sue in any of such Courts.

Explanation.—Every person residing in a foreign country the Government of which is at war with the United Kingdom of Great Britain and Ireland, and carrying on business in that country without a license in that behalf under the hand of one of His Majesty's Secretaries of State or of a Secretary to the Government of India, shall, for the purpose of sub-section (2), be deemed to be an alien enemy residing in a foreign country.

When foreign States may sue. **84. (1)** A foreign State may sue in any Court of British India :

Provided that such State has been recognized by His Majesty or by the Governor-General in Council :

Provided, also, that the object of the suit is to enforce a private right vested in the head of such State or in any officer of such State in his public capacity.

(2) Every Court shall take judicial notice of the fact that a foreign State has or has not been recognized by His Majesty or by the Governor-General in Council.

85. (1) Persons specially appointed by order of the Government at the request of any Sovereign Prince or Ruling Chief, whether in subordinate alliance with the British Government or otherwise, and whether residing within or without British India, or at the request of any person competent, in the opinion of the Government, to act on behalf of such Prince or Chief, to prosecute or defend any suit on his behalf, shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of such Prince or Chief.

(2) An appointment under this section may be made for the purpose of a specified suit or of several specified suits, or for the purpose of all such suits as it may from time to time be necessary to prosecute or defend on behalf of the Prince or Chief.

(3) A person appointed under this section may authorize or appoint persons to make appearances and applications and do acts in any such suit or suits as if he were himself a party thereto.

86. (1) Any such Prince or Chief, and any ambassador or Suits against Princes, Chiefs, ambassadors and envoys. envoy of a foreign State, may, with the consent of the Governor-General in Council, certified by the signature of a Secretary to the Government of India, but not without such consent, be sued in any competent Court.

(2) Such consent may be given with respect to a specified suit or to several specified suits, or with respect to all suits of any specified class or classes, and may specify, in the case of any suit or class of suits, the Court in which the Prince, Chief, ambassador or envoy may be sued ; but it shall not be given unless it appears to the Government that the Prince, Chief, ambassador or envoy—

- (a) has instituted a suit in the Court against the person desiring to sue him, or
- (b) by himself or another trades within the local limits of the jurisdiction of the Court, or
- (c) is in possession of immoveable property situate within those limits and is to be sued with reference to such property or for money charged thereon.

(3) No such Prince, Chief, ambassador or envoy shall be arrested under this Code, and, except with the consent of the Governor-General in Council certified as aforesaid, no decree shall be executed against the property of any such Prince, Chief, ambassador or envoy.

(4) The Governor-General in Council may, by notification in the Gazette of India, authorize a Local Government and any Secretary to that Government to exercise, with respect to any Prince, Chief, ambassador or envoy named in the notification, the functions assigned by the foregoing sub-sections to the Governor-General in Council and a Secretary to the Government of India, respectively.

(5) A person may, as a tenant of immoveable property, sue, without such consent as is mentioned in this section, a Prince, Chief, ambassador or envoy from whom he holds or claims to hold the property.

Style of Princes and Chiefs
as parties to suits.

87. A Sovereign Prince or Ruling Chief may sue, and shall be sued, in the name of his State :

Provided that in giving the consent referred to in the foregoing section the Governor-General in Council or the Local Government, as the case may be, may direct that any such Prince or Chief shall be sued in the name of an agent or in any other name.

INTERPLEADER.

88. Where two or more persons claim adversely to one another the same debt, sum of money or

Where interpleader-suit may be instituted. other property, moveable or immoveable, from another person, who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made, and of obtaining indemnity for himself :

Provided that where any suit is pending in which the rights of all parties can properly be decided, no such suit of interpleader shall be instituted.

PART V. SPECIAL PROCEEDINGS.

ARBITRATION.

89. (1) Save in so far as is otherwise provided by the Indian Arbitration Act, 1899, or by any other law for the time being in force, all references to arbitration whether by an order in a suit or otherwise, and all proceedings thereunder, shall be governed by the provisions contained in the Second Schedule.

(2) The provisions of the Second Schedule shall not affect any arbitration pending at the commencement of this Code, but shall apply to any arbitration after that date under any agreement or reference made before the commencement of this Code.

SPECIAL CASE.

90. Where any persons agree in writing to state a case for the opinion of the Court, then the Court shall try and determine the same in the manner prescribed.

SUITS RELATING TO PUBLIC MATTERS.

91. (1) In the case of a public nuisance the Advocate-General, or two or more persons having obtained the consent in writing of the Advocate-General, may institute a suit, though no special damage has been caused, for a declaration and injunction or for such other relief as may be appropriate to the circumstances of the case.

(2) Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.

92. (1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the

administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the consent in writing of the Advocate-General, may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the Local Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree—

- (a) removing any trustee ;
- (b) appointing a new trustee ;
- (c) vesting any property in a trustee ;
- (d) directing accounts and inquiries ;
- (e) declaring what proportion of the trust-property or of the interest therein shall be allocated to any particular object of the trust ;
- (f) authorizing the whole or any part of the trust-property to be let, sold, mortgaged or exchanged ;
- (g) settling a scheme ; or
- (h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863,* no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

93. The powers conferred by sections 91 and 92 on the Advocate-General may, outside the Presidency-towns, be, with the previous sanction of the Local Government, exercised also by the Collector or by such officer as the Local Government may appoint in this behalf.

PART VI.

SUPPLEMENTAL PROCEEDINGS.

94. In order to prevent the ends of justice from being defeated the Court may, if it is so prescribed, —
Supplemental proceedings.

* Act XX. of 1863.

- (a) issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to the civil prison ;
- (b) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the Court or order the attachment of any property ;
- (c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold ;
- (d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property ;
- (e) make such other interlocutory orders as may appear to the Court to be just and convenient.

Compensation for obtaining arrest, attachment or injunction on insufficient grounds.

95. (1) Where, in any suit in which an arrest or attachment has been effected or a temporary injunction granted under the last preceding section,—

- (a) it appears to the Court that such arrest, attachment or injunction was applied for on insufficient grounds or
- (b) the suit of the plaintiff fails and it appears to the Court that there was no reasonable or probable ground for instituting the same,

the defendant may apply to the Court, and the Court may, upon such application, award against the plaintiff by its order such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him :

Provided that a Court shall not award, under this section, an amount exceeding the limits of its pecuniary jurisdiction.

(2) An order determining any such application shall bar any suit for compensation in respect of such arrest, attachment or injunction.

PART VII.

APPEALS.

APPEALS FROM ORIGINAL DECREES.

96. (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed *ex parte*.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

97. Where any party aggrieved by a preliminary decree passed after the commencement of this Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree.

98. (1) Where an appeal is heard by a Bench of two or more Judges, the appeal shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges.

(2) Where there is no such majority which concurs in a judgment varying or reversing the decree appealed from, such decree shall be confirmed :

Provided that where the Bench hearing the appeal is composed of two Judges belonging to a Court consisting of more than two Judges, and the Judges composing the Bench differ in opinion on a point of law, they may state the point of law upon which they differ, and the appeal shall then be heard upon that point only by one or more of the other Judges, and such point shall be decided according to the opinion of the majority (if any) of the Judges who have heard the appeal, including those who first heard it.

99. No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court.

APPEALS FROM APPELLATE DECREES.

100. (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to a High Court, on any of the following grounds, namely :—

- (a) the decision being contrary to law or to some usage having the force of law ;
- (b) the decision having failed to determine some material issue of law or usage having the force of law ;
- (c) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.

(2) An appeal may lie under this section from an appellate decree passed *ex parte*.

Second appeal on no other grounds. **101.** No second appeal shall lie except on the grounds mentioned in section 100.

102. No second appeal shall lie in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees.

103. In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue of fact necessary for the disposal of the appeal but not determined by the lower appellate Court.

APPEALS FROM ORDERS.

104. (1) An appeal shall lie from the following orders, and Orders from which appeal save as otherwise expressly provided lies. in the body of this Code or by any law for the time being in force from no other orders :—

- (a) an order superseding an arbitration where the award has not been completed within the period allowed by the Court ;
- (b) an order on an award stated in the form of a special case ;
- (c) an order modifying or correcting an award ;
- (d) an order filing or refusing to file an agreement to refer to arbitration ;
- (e) an order staying or refusing to stay a suit where there is an agreement to refer to arbitration ;
- (f) an order filing or refusing to file an award in an arbitration without the intervention of the Court ;
- (g) an order under section 95 ;
- (h) an order under any of the provisions of this Code imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution of a decree ;
- (i) any order made under rules from which an appeal is expressly allowed by rules.

(2) No appeal shall lie from any order passed in appeal under this section.

105. (1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction ; but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

(2) Notwithstanding anything contained in sub-section (1), where any party aggrieved by an order of remand made after the commencement of this Code from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.

106. Where an appeal from any order is allowed, it shall lie to the Court to which an appeal would lie from the decree in the suit in which such order was made, or where such order is made by a Court (not being a High Court) in the exercise of appellate jurisdiction, then to the High court.

GENERAL PROVISIONS RELATING TO APPEALS.

107. (1) Subject to such conditions and limitations as may be prescribed, an appellate Court shall have power—

- (a) to determine a case finally ;
- (b) to remand a case ;
- (c) to frame issues and refer them for trial ;
- (d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.

108 The provisions of this Part relating to appeals from original decrees shall, so far as may be, apply to appeals—

- (a) from appellate decrees, and
- (b) from orders made under this Code or under any special or local law in which a different procedure is not provided.

APPEALS TO THE KING IN COUNCIL.

109. Subject to such rules as may, from time to time, be made by His Majesty in Council regarding appeals from the Courts of British India, and to the provisions hereinafter contained, an appeal shall lie to His Majesty in Council—

- (a) from any decree or final order passed on appeal by a High Court or by any other Court of final appellate jurisdiction ;

- (b) from any decree or final order passed by a High Court in the exercise of original civil jurisdiction; and
- (c) from any decree or order, when the case, as hereinafter provided, is certified to be a fit one for appeal to His Majesty in Council.

110 In each of the cases mentioned in clauses (a) and (b) of section 109, the amount or value of the subject-matter of the suit in the Court of first instance must be ten thousand rupees or upwards, and the amount or value of the subject-matter in dispute on appeal to His Majesty in Council must be the same sum or upwards,

or the decree or final order must involve, directly or indirectly, some claim or question to or respecting property of like amount or value,

and where the decree or final order appealed from affirms the decision of the Court immediately below the Court passing such decree or final order, the appeal must involve some substantial question of law.

111. Notwithstanding anything contained in section 109, no appeal shall lie to his Majesty in Council—

- (a) from the decree or order of one Judge of a High Court established under the Indian High Courts Act,* 1861, or of one Judge of a Division Court, or of two or more Judges of such High Court, or of a Division Court constituted by two or more Judges of such High Court, where such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the High Court at the time being; or
- (b) from any decree from which under section 109 no second appeal lies.

Savings.

112. (1) Nothing contained in this Code shall be deemed —

- (a) to bar the full and unqualified exercise of His Majesty's pleasure in receiving or rejecting appeals to His Majesty in Council, or otherwise howsoever, or

* Stat. 24 & 25 Vict., c. 104.

(b) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals to His Majesty in Council, or their conduct before the said Judicial Committee.

(2) Nothing herein contained applies to any matter of criminal or admiralty or vice-admiralty jurisdiction, or to appeals from orders and decrees of Prize Courts.

PART VIII

REFERENCE, REVIEW AND REVISION.

113. Subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit.

Review.

114. Subject as aforesaid, any person considering himself aggrieved—

- (a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,
- (b) by a decree or order from which no appeal is allowed by this Code, or
- (c) by a decision on a reference from a Court of Small Causes,

may apply for a review of judgment to the Court, which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.

115. The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—

- (a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have failed to exercise a jurisdiction so vested, or

50 SPECIAL PROVISIONS RELATING TO THE CHARTERED HIGH COURT.

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit.

PART IX.

SPECIAL PROVISIONS RELATING TO THE CHARTERED HIGH COURTS.

116. This Part applies only to High Courts which are or may hereafter be established under the Indian High Courts Act, 1861.*
Part to apply only to certain High Courts.

117. Save as provided in this Part or in Part X. or in rules, the provisions of this Code shall apply to such High Courts.
Application of Code to High Courts.

118. Where any such High Court considers it necessary that a decree passed in the exercise of its original civil jurisdiction should be executed before the amount of the costs incurred in the suit can be ascertained by taxation, the Court may order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs:

and, as to so much thereof as relates to the costs, that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation.

119. Nothing in this Code shall be deemed to authorize any person on behalf of another to address the Court in the exercise of its original civil jurisdiction, or to examine witnesses, except where the Court shall have in the exercise of the power conferred by its charter authorized him so to do, or to interfere with the power of the High Court to make rules concerning advocates, vakils and attorneys.
Unauthorized persons not to address Courts.

120. (1) The following provisions shall not apply to the High Court in the exercise of its original civil jurisdiction, namely, sections 16, 17, and 20.
Provisions not applicable to High Court in original civil or insolvent jurisdiction.

* Stat. 24 & 25 Vict., c. 104.

(2) [*Repealed by Act III. of 1909.*]

PART X.

RULES.

121. The rules in the First Schedule shall have effect as if enacted in body of this Code until annulled or altered in accordance with the provisions of this Part.

122. High Courts established under the Indian High Courts Act, 1861,* and the Chief Courts of the Punjab and Lower Burma, may, from time to time after previous publication make rules regulating their own procedure and the procedure of the Civil Courts subject to their superintendence, and may by such rules annul, alter or add to all or any of the rules in the First Schedule.

123. (1) A Committee, to be called the Rule Committee, shall be constituted at each of the towns of Calcutta, Madras, Bombay, Allahabad, Lahore and Rangoon.

(2) Each such Committee shall consist of the following persons, namely :—

- (a) three Judges of the High Court established at the town at which such Committee is constituted, one of whom at least has served as a District Judge or (in the Punjab or Burma) a Divisional Judge for three years.
- (b) a barrister practising in that Court,
- (c) an advocate (not being a barrister) or vakil or pleader enrolled in that court,
- (d) a Judge of a Civil Court subordinate to the High Court, and
- (e) in the towns of Calcutta, Madras and Bombay, an attorney.

* Stat. 24 & 25 Vict., c. 104.

(3) The members of each such Committee shall be appointed by the Chief Justice or Chief Judge, who shall also nominate one of their number to be president:

Provided that, if the Chief Justice or Chief Judge elects to be himself a member of a Committee, the number of other Judges appointed to be members shall be two, and the Chief Justice or Chief Judge shall be the President of the Committee.

(4) Each member of any such Committee shall hold office for such period as may be prescribed by the Chief Justice or Chief Judge in this behalf; and whenever any member retires, resigns, dies or ceases to reside in the province in which the Committee was constituted, or becomes incapable of acting as a member of the Committee, the said Chief Justice or Chief Judge may appoint another person to be a member in his stead.

(5) There shall be a Secretary to each such Committee, who shall be appointed by the Chief Justice or Chief Judge and shall receive such remuneration as may be provided in this behalf by the Governor-General in Council or by the Local Government, as the case may be.

124. Every Rule Committee shall make a report to the High Court established at the town at which it is constituted on any proposal to annul or add to the rules in the First Schedule or to make new rules and before making any rules under section 122 the High Court

125. High Courts, other than the Courts specified in section 122, may exercise the powers conferred by that section in such manner and subject to such conditions as the Governor-General in Council may determine:

Provided that any such High Court may, after previous publication, make a rule extending within the local limits of its jurisdiction any rules which have been made by any other High Court.

126. Rules made under the foregoing provisions shall be subject to the previous sanction of the following authorities, namely:—

Rules subject to sanction.

- (a) if the rule is made by a High Court established under the Indian High Courts Act, 1861,* to the sanction of the authority prescribed by section 15 of that Act for rules made under that section ;
- (b) if the rule is made by any other High Court, to the sanction of the Local Government.

127. Rules so made and sanctioned shall be published in the Gazette of India or in the local official Gazette, as the case may be, and shall from the date of publication or from such other date as may be specified have the same force and effect, within the local limits of the jurisdiction of the High Court which made them, as if they had been contained in the First Schedule.

128. (1) Such Rules shall be not inconsistent with the provisions in the body of this Code, but, subject thereto, may provide for any matters relating to the procedure of Civil Courts.

(2) In particular, and without prejudice to the generality of the powers conferred by sub-section (1), such rules may provide for all or any of the following matters, namely :—

- (a) the service of summonses, notices and other processes by post or in any other manner either generally or in any specified areas, and the proof of such service ;
- (b) the maintenance and custody, while under attachment, of live-stock and other moveable property, the fees payable for such maintenance and custody, the sale of such live-stock and property and the proceeds of such sale ;
- (c) procedure in suits by way of counter-claim, and the valuation of such suits for the purposes of jurisdiction ;
- (d) procedure in garnishee and charging orders either in addition to, or in substitution for, the attachment and sale of debts ;
- (e) procedure where the defendant claims to be entitled to contribution or indemnity over against any person whether a party to the suit or not ;

* Stat. 24 & 25 Vict., c. 104.

(f) summary procedure—

(i) in suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising—

on a contract express or implied; or

on an enactment where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or

on a guarantee, where the claim against the principal is in respect of a debt or a liquidated demand only; or

on a trust; or

(ii) in suits for the recovery of immoveable property, with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired or has been duly determined by notice to quit or has become liable to forfeiture for non-payment of rent, or against persons claiming under such tenant;

(g) procedure by way of originating summons;

(h) consolidation of suits, appeals and other proceedings;

(i) delegation to any Registrar, Prothonotary or Master or other official of the Court of any judicial, quasi-judicial and non-judicial duties; and

(j) all forms, registers, books, entries and accounts which may be necessary or desirable for the transaction of the business of Civil Courts.

129. Notwithstanding anything in this Code, any High Court established under the Indian High Courts Act, 1861,* may make such rules not inconsistent with the Letters Patent establishing it to regulate its own procedure in the exercise of its original civil jurisdiction as it shall think fit, and nothing herein contained shall affect the validity of any such rules in force at the commencement of this Code.

Power of Chartered High Courts to make rules as to their original civil procedure.

* Stat. 24 & 25 Vict., c. 104.

130. A High Court not established under the Indian High

Power of other High Courts
to make rules as to matters
other than procedure.

Courts Act, 1861,* may, with the previous sanction of the Local Government, make, with respect to any matter other than procedure, any rule which any High Court so established might, under section 15 of that Act, make with respect to any such matter for any part of the territories under its jurisdiction which is not included within the limits of a Presidency-town.

131. Rules made in accordance with section 129 or section

Publication of rules.

130 shall be published in the Gazette of India or in the local official Gazette, as the case may be, and shall from the date of publication or from such other date as may be specified have the force of law.

PART XI.**MISCELLANEOUS.****132. (1) Women who, according to the customs and manners**

Exemption of certain women
of the country, ought not to be com-
pelled to appear in public shall be

exempt from personal appearance in Court.

(2) Nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process in any case in which the arrest of women is not prohibited by this Code.

133 (1) The Local Government may, by notification in the

Exemption of other per-
sons.

local official Gazette, exempt from personal appearance in Court any person whose rank, in the opinion of such Government, entitles him to the privilege of exemption.

(2) The names and residences of the persons so exempted shall, from time to time, be forwarded to the High Court by the Local Government and a list of such persons shall be kept in such Court, and a list of such persons as reside within the local limits of the jurisdiction of each Court subordinate to the High Court shall be kept in such subordinate Court.

(3) Where any person so exempted claims the privilege of such exemption, and it is consequently necessary to examine him

* Stat. 24 & 25 Vict., c. 104.

by commission, he shall pay the costs of that commission, unless the party requiring his evidence pays such costs.

134. The provisions of sections 55, 57 and 59 shall apply, so far as may be, to all persons arrested under this Code.

Arrest other than in execution of decree.

135. (1) No Judge, Magistrate or other judicial officer shall be liable to arrest under civil process while going to, presiding in, or returning from, his Court.

Exemption from arrest under civil process.

(2) Where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtars, revenue-agents and recognized agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under civil process other than process issued by such tribunal for contempt of Court while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal.

(3) Nothing in sub-section (2) shall enable a judgment debtor to claim exemption from arrest under an order for immediate execution or where such judgment-debtor attends to show cause why he should not be committed to prison in execution of a decree.

136. (1) Where an application is made that any person shall be arrested or that any property shall be attached under any provision of this Code not relating to the execution of decrees, and such person resides or such property is situate outside the local limits of the jurisdiction of the Court to which the application is made, the Court may, in its discretion, issue a warrant of arrest or make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

Procedure where person to be arrested or property to be attached is outside district.

(2) The District Court shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by a Court subordinate to itself, and shall inform the Court which issued or made such warrant or order of the arrest or attachment.

(3) The Court making an arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he shows cause to the satisfaction of the former

Court why he should not be sent to the latter Court, or unless he furnishes sufficient security for his appearance before the latter Court or for satisfying any decree that may be passed against him by that Court, in either of which cases the Court making the arrest shall release him.

(4) Where a person to be arrested or moveable property to be attached under this section is within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal or at Madras or at Bombay, or of the Chief Court of Lower Burma, the copy of the warrant of arrest or of the order of attachment, and the probable amount of the costs of the arrest or attachment, shall be sent to the Court of Small Causes of Calcutta, Madras, Bombay or Rangoon, as the case may be, and that Court, on receipt of the copy and amount, shall proceed as it it were the District Court.

137. (1) The language which, on the commencement of this Code, is the language of any Court of subordinate Courts, shall continue to be the language of such subordinate Court until the Local Government otherwise directs.

(2) The Local Government may declare what shall be the language of any such Court and in what character applications to and proceedings in such Court shall be written.

(3) Where this Code requires or allows anything other than the recording of evidence to be done in writing in any such Court, such writing may be in English; but if any party or his pleader is unacquainted with English a translation into the language of the Court shall, at his request, be supplied to him; and the Court shall make such order as it thinks fit in respect of the payment of the costs of such translation.

138. (1) The Local Government may, by notification in the local official Gazette, direct with respect to any Judge specified in the notification, or falling under a description set forth therein, that evidence in cases in which an appeal is allowed shall be taken down by him in the English language and in manner prescribed.

(2) Where a Judge is prevented by any sufficient reason from complying with a direction under sub-section (1), he shall record

the reason and cause the evidence to be taken down in writing from his dictation in open Court.

Oath on affidavit by whom to be administered. **139.** In the case of any affidavit under this Code—

- (a) any Court or Magistrate, or
- (b) any officer or other person whom a High Court may appoint in this behalf, or
- (c) any officer appointed by any other Court which the Local Government has generally or specially empowered in this behalf,

may administer the oath to the deponent.

140. (1) In any Admiralty or Vice-Admiralty cause of salvage, towage or collision, the Court, whether it be exercising its original or its appellate jurisdiction, may, if it thinks fit, and shall on request of either party to such cause, summon to its assistance, in such manner as it may direct or as may be prescribed, two competent assessors; and such assessors shall attend and assist accordingly.

(2) Every such assessor shall receive such fees for his attendance, to be paid by such of the parties as the Court may direct or as may be prescribed.

141. The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.

142. All orders and notices served on or given to any person under the provisions of this Code shall be in writing.

143. Postage, where chargeable on a notice, summons or letter issued under this Code and forwarded by post, and the fee for registering the same, shall be paid within a time to be fixed before the communication is made:

Provided that the Local Government, with the previous sanction of the Governor-General in Council, may remit such postage, or fee, or both, or may prescribe a scale of court-fees to be levied in lieu thereof.

144. (1) Where and in so far as a decree is varied or re-

versed, the Court of first instance shall, on the application of any party entitled to any benefit by way of restitution, or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or such part thereof as has been varied or reversed; and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne-profits, which are properly consequential on such variation or reversal.

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1).

Enforcement of liability of
surety

145. Where any person has become liable as surety—

- (a) for the performance of any decree or any part thereof, or
- (b) for the restitution of any property taken in execution of a decree, or
- (c) for the payment of any money, or for the fulfilment of any condition imposed on any person, under an order of the Court in any suit or in any proceeding consequent thereon,

the decree or order may be executed against him, to the extent to which he has rendered himself personally liable, in the manner herein provided for the execution of decrees, and such person shall, for the purposes of appeal, be deemed a party within the meaning of section 47:

Provided that such notice as the Court in each case thinks sufficient has been given to the surety.

146. Save as otherwise provided by this Code or by any

Proceedings by or against law for the time being in force, where any proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him.

147. In all suits to which any person under disability is a

party, any consent or agreement as to persons under disability. any proceeding shall, if given or made

with the express leave of the Court by the next friend or guardian for the suit, have the same force and effect as if such person were under no disability and had given such consent or made such agreement.

148. Where any period is fixed or granted by the Court for the doing of any act prescribed or
 Enlargement of time. allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.

149. Where the whole or any part of any fee prescribed for any document by the law for the time
 Power to make up deficiency of court-fees. being in force relating to court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court-fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.

150. Save as otherwise provided, where the business of any Court is transferred to any other Court, the Court to which the business is so
 Transfer of business. transferred shall have the same powers and shall perform the same duties as those respectively conferred and imposed by or under this Code upon the Court from which the business was so transferred.

151. Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the
 Saving of inherent powers of Court. Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

152. Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from
 Amendment of judgments, decrees or orders. any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.

153. The Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.

154. Nothing in this Code shall affect any present right of appeal which shall have accrued to any party at its commencement.

Saving of present right of appeal.

155. The enactments mentioned in the Fourth Schedule are hereby amended to the extent specified in the fourth column thereof.

Amendment of certain Acts.

156. The enactments mentioned in the Fifth Schedule are hereby repealed to the extent specified in the fourth column thereof.

Repeals.

157. Notifications published, declarations and rules made, places appointed, agreements filed, scales prescribed, forms framed, appointments made and powers conferred under Act VIII. of 1859 or under any Code or Civil Procedure or any Act amending the same or under any other enactment hereby repealed shall, so far as they are consistent with this Code, have the same force and effect as if they had been respectively published, made, appointed, filed, prescribed, framed and conferred under this Code and by the authority empowered thereby in such behalf.

Continuance of orders under repealed enactments.

158. In every enactment or notification passed or issued before the commencement of this Code in which reference is made to or to any Chapter or section of Act VIII. of 1859 or any Code of Civil Procedure or any Act amending the same or any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding Part, Order, section or rule.

Reference to Code of Civil Procedure and other repealed enactments.

The First Schedule.

ORDER I.

PARTIES TO SUITS.

RULES.

1. Who may be joined as plaintiffs
2. Power of Court to order separate trials.
3. Who may be joined as defendants
4. Court may give judgment for or against one or more of joint parties
5. Defendant need not be interested in all the relief claimed
6. Joinder of parties liable on same contract
7. When plaintiff in doubt from whom redress is to be sought
8. One person may sue or defend on behalf of all in same interest.
9. Misjoinder and non-joinder.
10. Suit in name of wrong plaintiff
Court may strike out or add parties
Where defendant added, plaint to be amended.
11. Conduct of suit.
12. Appearance of one of several plaintiffs or defendants for others
13. Objections as to non-joinder or misjoinder.

ORDER II

FRAME OF SUIT.

1. Frame of suit.
2. Suit to include the whole claim.
Relinquishment of part of claim
Omission to sue for one of several reliefs.

RULES.

3. Joinder of causes of action.
4. Only certain claims to be joined for recovery of immoveable property.
5. Claims by or against executor, administrator or heir.
6. Power of Court to order separate trials.
7. Objections as to misjoinder.

ORDER III.

RECOGNIZED AGENTS AND PLEADERS.

1. Appearances, etc., may be in person, by recognized agent or by pleader.
2. Recognized agents.
3. Service of process on recognized agent
4. Appointment of pleader.
5. Service of process on pleader.
6. Agent to accept service.
Appointment to be in writing and to be filed in Court.

ORDER IV.

INSTITUTION OF SUITS.

1. Suit to be commenced by plaint.
2. Register of suits.

ORDER V.

ISSUE AND SERVICE OF SUMMONS.

Issue of Summons.

1. Summons.
2. Copy or statement annexed to summons.
3. Court may order defendant or plaintiff to appear in person.

RULES.

4. No party to be ordered to appear in person unless resident within certain limits.
5. Summons to be either to settle issues or for final disposal.
6. Fixing day for appearance of defendant.
7. Summons to order defendant to produce documents relied on by him.
8. On issue of summons for final disposal defendant to be directed to produce his witnesses.

Service of Summons

9. Delivery or transmission of summons for service.
10. Mode of service.
11. Service on several defendants.
12. Service to be on defendant in person where practicable, or on his agent.
13. Service on agent by whom defendant carries on business.
14. Service on agent in charge of suits for immoveable property.
15. Where service may be on member of defendant's family.
16. Person served to sign acknowledgment.
17. Procedure when defendant refuses to accept service, or can not be found.
18. Endorsement of time and manner of service.
19. Examination of serving officer.
20. Substituted service.
Effect of substituted service.
Where service substituted, time for appearance to be fixed.
21. Service of summons where defendant resides within jurisdiction of another Court.
22. Service, within Presidency-towns and Rangoon, of summons issued by Courts outside.
23. Duty of Court to which summons is sent,

RULES.

24. Service on defendant in prison.
25. Service where defendant resides out of British India and has no agent.
26. Service in foreign territory through Political Agent or Court.
27. Service on civil public officer or on servant of railway company or local authority.
28. Service on soldiers.
29. Duty of person to whom summons is delivered or sent for service.
30. Substitution of letter for summons.

ORDER VI

PLEADINGS GENERALLY

1. Pleading.
2. Pleading to state material facts and not evidence.
3. Forms of pleading.
4. Particulars to be given where necessary.
5. Further and better statement, or particulars.
6. Condition precedent.
7. Departure.
8. Denial of contract.
9. Effect of document to be stated.
10. Malice, knowledge, etc.
11. Notice.
12. Implied contract, or relation.
13. Presumptions of law.
14. Pleading to be signed.
15. Verification of pleadings.
16. Striking out pleadings.
17. Amendment of pleadings.
18. Failure to amend after order.

ORDER VII.

PLAINT

1. Particulars to be contained in plaint.
2. In money suits.

RULES.

3. Where the subject-matter of the suit is immoveable property.
4. When plaintiff sues as representative.
5. Defendant's interest and liability to be shown.
6. Grounds of exemption from limitation law.
7. Relief to be specifically stated.
8. Relief founded on separate grounds.
9. Procedure on admitting plaint. Concise statements.
10. Return of plaint. Procedure on returning plaint.
11. Rejection of plaint.
12. Procedure on rejecting plaint.
13. Where rejection of plaint does not preclude presentation of fresh plaint.

Documents relied on in plaint.

14. Production of document on which plaintiff sues.
List of other documents.
15. Statement in case of documents not in his possession or power.
16. Suits on lost negotiable instruments.
17. Production of shop-book.
Original entry to be marked and returned.
18. Inadmissibility of document not produced when plaint filed.

ORDER VIII.

WRITTEN STATEMENT AND SET-OFF.

1. Written statement.
2. New facts must be specially pleaded.
3. Denial to be specific.
4. Evasive denial.
5. Specific denial.
6. Particulars of set-off to be given in written statement.
Effect of set-off
7. Defence or set-off founded on separate grounds.

RULES.

New ground of defence.
Subsequent pleadings.
Procedure when party fails to present written statement called for by Court.

ORDER IX.

APPEARANCE OF PARTIES AND CONSEQUENCE OF NON-APPEARANCE.

1. Parties to appear on day fixed in summons for defendant to appear and answer.
2. Dismissal of suit where summons not served in consequence of plaintiff's failure to pay costs.
3. Where neither party appears, suit to be dismissed.
4. Plaintiff may bring fresh suit or Court may restore suit to file.
5. Dismissal of suit where plaintiff, after summons returned unserved, fails for a year to apply for fresh summons.
6. Procedure when only plaintiff appears.
When summons duly served.
When summons not duly served.
When summons served, but not in due time.
7. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance
8. Procedure where defendant only appears.
9. Decree against plaintiff by default bars fresh suit.
10. Procedure in case of non-attendance of one or more of several plaintiffs.
11. Procedure in case of non-attendance of one or more of several defendants.
12. Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person.

RULES.

Setting aside Decrees ex parte.

13. Setting aside decree *ex parte* against defendant.
14. No decree to be set aside without notice to opposite party.

ORDER X.

EXAMINATION OF PARTIES BY THE COURT.

1. Ascertainment whether allegations in pleadings are admitted or denied.
2. Oral examination of party, or companion of party.
3. Substance of examination to be written.
4. Consequence of refusal or inability of pleader to answer.

ORDER XI.

DISCOVERY AND INSPECTION.

1. Discovery by interrogatories.
2. Particular interrogatories to be submitted.
3. Costs of interrogatories.
4. Form of interrogatories.
5. Corporations.
6. Objections to interrogatories by answer.
7. Setting aside and striking out interrogatories.
8. Affidavit in answer, filing.
9. Form of affidavit in answer.
10. No exception to be taken.
11. Order to answer or answer further.
12. Application for discovery of documents.
13. Affidavit of documents.
14. Production of documents.
15. Inspection of documents referred to in pleading or affidavits.
16. Notice to produce.
17. Time for inspection when notice given.
18. Order for inspection.

RULES.

19. Verified copies.
20. Premature discovery.
21. Non-compliance with order for discovery.
22. Using answers to interrogatories at trial.
23. Order to apply to minors.

ORDER XII.

ADMISSIONS.

1. Notice of admission of case.
2. Notice to admit documents.
3. Form of notice.
4. Notice to admit facts.
5. Form of admissions.
6. Judgment on admissions.
7. Affidavit of signature.
8. Notice to produce documents.
9. Costs.

ORDER XIII.

PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS.

1. Documentary evidence to be produced at first hearing.
2. Effect of non-production of documents.
3. Rejection of irrelevant or inadmissible documents.
4. Endorsements on documents admitted in evidence.
5. Endorsements on copies of admitted entries in books, accounts and records.
6. Endorsements on documents rejected as inadmissible in evidence.
7. Recording of admitted and return of rejected documents.
8. Court may order any document to be impounded.
9. Return of admitted documents.
10. Court may send for papers from its own records or from other Courts.
11. Provisions as to documents applied to material objects.

RULES.

ORDER XIV.

SETTLEMENT OF ISSUES AND DETERMINATION OF SUIT ON ISSUES OF LAW OR ON ISSUES AGREED UPON.

1. Framing of issues.
2. Issues of law and of fact.
3. Materials from which issues may be framed.
4. Court may examine witnesses or documents before framing issues.
5. Power to amend, and strike out, issues.
6. Questions of fact or law may by agreement be stated in form of issues.
7. Court, if satisfied that agreement was executed in good faith, may pronounce judgment.

ORDER XV.

DISPOSAL OF THE SUIT AT THE FIRST HEARING.

1. Parties not at issue.
2. One of several defendants not at issue.
3. Parties at issue.
4. Failure to produce evidence.

ORDER XVI.

SUMMONING AND ATTENDANCE OF WITNESSES.

1. Summons to attend to give evidence or produce documents.
2. Expenses of witness to be paid into Court on applying for summons.
Experts.
Scale of expenses.
3. Tender of expenses to witness.
4. Procedure where insufficient sum paid in.
Expenses of witnesses detained more than one day.
5. Time, place and purpose of attendance to be specified in summons.

RULES.

6. Summons to produce document.
7. Power to require persons present in Court to give evidence or produce document.
8. Summons how served.
9. Time for serving summons.
10. Procedure where witness fails to comply with summons.
11. If witness appears, attachment may be withdrawn.
12. Procedure if witness fails to appear.
13. Mode of attachment.
14. Court may of its own accord summon as witnesses strangers to suit.
15. Duty of persons summoned to give evidence or produce document.
16. When they may depart.
17. Application of rules 10 to 13.
18. Procedure where witness apprehended cannot give evidence or produce document.
19. No witness to be ordered to attend in person unless resident within certain limits.
20. Consequence of refusal of party to give evidence when called on by Court.
21. Rules as to witnesses to apply to parties summoned.

ORDER XVII.

ADJOURNMENTS.

1. Court may grant time and adjourn hearing.
Costs of adjournment.
2. Procedure if parties fail to appear on day fixed.
3. Court may proceed notwithstanding either party fails to produce evidence, etc.

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21. Re-hearing on application of respondent against whom *ex parte* decree made.
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27. Production of additional evidence in Appellate Court.
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The First Schedule.

ORDER I.

PARTIES TO SUITS.

1. All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if such persons brought separate suits, any common question of law or fact would arise.

2. Where it appears to the Court that any joinder of plaintiffs may embarrass or delay the trial of the suit, the Court may put the plaintiffs to their election or order separate trials or make such other order as may be expedient.

3. All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where if separate suits were brought against such persons any common question of law or fact would arise.

Court may give judgment for or against one or more of joint parties.

4. Judgment may be given without any amendment—

(a) for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to ;

(b) against such one or more of the defendants as may be found to be liable, according to their respective liabilities.

5. It shall not be necessary that every defendant shall be interested as to all the relief claimed in any suit against him.

6. The plaintiff may, at his option, join as parties to the same suit all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange, hundis and promissory notes.

7. Where the plaintiff is in doubt as to the person from whom he is entitled to obtain redress, he may join two or more defendants in order that the question as to which of the defendants is liable, and to what extent, may be determined as between all parties.

8. (1) Where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the Court, sue or be

sued, or may defend, in such suit, on behalf of or for the benefit of all persons so interested. But the Court shall in such case give, at the plaintiff's expense, notice of the institution of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the Court in each case, may direct.

(2) Any person on whose behalf or for whose benefit a suit is instituted or defended under sub-rule (1) may apply to the Court to be made a party to such suit.

9. No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal when the matter in controversy so far as regards the rights and interests of the parties actually before it.

10. (1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a *bona-fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) The Court may at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

(5) Subject to the provisions of the Indian Limitation Act,* 1877, section 22 the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.

Conduct of suit.

11. The Court may give the conduct of the suit to such person as it deems proper.

12. (1) Where there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any

Appearance of one of several plaintiffs or defendants for others.

* Act XV. of 1877.

proceeding; and in like manner, where there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding.

(2) The authority shall be in writing signed by the party giving it and shall be filed in Court.

13 All objections on the ground of non-joinder or misjoinder of parties shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

ORDER II.

FRAME OF SUIT.

1 Every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them.

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action, but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation.—For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

Illustration.

A lets a house to B at a yearly rent of Rs. 1,200. The rent for the whole of the years 1905, 1906 and 1907 is due and unpaid. A sues B in 1908 only for the rent due for 1906. A shall not afterwards sue B for the rent due for 1905 or 1907.

3. (1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested

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against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit.

Only certain claims to be joined for recovery of immoveable property.

4 No cause of action shall, unless with the leave of the Court, be joined with a suit for the recovery of immoveable property, except—

- (a) claims for mesne-profits or arrears of rent in respect of the property claimed or any part thereof;
- (b) claims for damages for breach of any contract under which the property or any part thereof is held; and
- (c) claims in which the relief sought is based on the same cause of action:

Provided that nothing in this rule shall be deemed to prevent any party in a suit for foreclosure or redemption from asking to be put into possession of the mortgaged property.

5. No claim by or against an executor, administrator or heir, as such, shall be joined with claims by or against him personally, unless the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor, administrator or heir, or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents.

6. Where it appears to the Court that any causes of action joined in one suit cannot be conveniently tried or disposed of together, the Court may order separate trials or make such other order as may be expedient.

7. All objections on the ground of misjoinder of causes of action shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

ORDER III.

RECOGNIZED AGENTS AND PLEADERS.

1. Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf:

Provided that any such appearance shall, if the Court so directs, be made by the party in person.

Recognized agents.

2. The recognized agents of parties by whom such appearances, applications and acts may be made or done are—

- (a) persons holding powers-of-attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties ;
- (b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts.

3. (1) Processes served on the recognized agent of a party shall be as effectual as if the same had been served on the party in person, unless the Court otherwise directs.

(2) The provisions for the service of process on a party to a suit shall apply to the service of process on his recognized agent.

4. (1) The appointment of a pleader to make or do any appearance, application or act for any person shall be in writing, and shall be signed by such person or by his recognized agent or by some other person duly authorized by power-of-attorney to act in this behalf.

(2) Every such appointment, when accepted by a pleader, shall be filed in Court, and shall be considered to be in force until determined with the leave of the Court, by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies or until all proceedings in the suit are ended so far as regards the client.

(3) No advocate of any High Court established under the Indian High Courts Act, 1861, or of any Chief Court,* and no advocate of any other High Court who is a barrister shall be required to present any document empowering him to act.

5. Any process served on the pleader of any party or left at the office or ordinary residence of such pleader, and whether the same is for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents, and, unless the Court otherwise directs, shall be as effectual for all purposes as if the same had been given to or served on the party in person.

6. (1) Besides the recognized agents described in rule 2 any person residing within the jurisdiction of the Court may be appointed an agent to accept service of process.

* 24 & 25 Vict, c. 104.

(2) Such appointment may be special or general and shall be made by an instrument in writing signed by the principal, and such instrument or, if the appointment is general, a certified copy thereof shall be filed in Court.

ORDER IV

INSTITUTION OF SUITS.

1. (1) Every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf.

(2) Every plaint shall comply with the rules contained in Orders VI and VII., so far as they are applicable

2. The Court shall cause the particulars of every suit to be entered in a book to be kept for the purpose and called the register of civil suits. Such entries shall be numbered in every year according to the order in which the plaints are admitted.

ORDER V.

ISSUE AND SERVICE OF SUMMONS.

Issue of Summons.

1. (1) When a suit has been duly instituted a summons may be issued to the defendant to appear and answer the claim on a day to be therein specified.

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim.

(2) A defendant to whom a summons has been issued under sub-rule (1) may appear—

(a) in person, or

(b) by a pleader duly instructed and able to answer all material questions relating to the suit, or

(c) by a pleader accompanied by some person able to answer all such questions.

(3) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court.

Copy or statement annexed to summons.

2. Every summons shall be accompanied by a copy of the plaint or, if so permitted, by a concise statement.

3. (1) Where the Court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in Court on the day therein specified.

(2) Where the Court sees reason to require the personal appearance of the plaintiff on the same day, it shall make an order for such appearance.

No party to be ordered to appear in person unless resident within certain limits.

4. No party shall be ordered to appear in person unless he resides—

(a) within the local limits of the Court's ordinary original jurisdiction, or

(b) without such limits but at a place less than fifty or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situated), less than two hundred miles distance from the court-house.

5. The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly:

Provided that, in every suit heard by a Court of Small Causes, the summons shall be for the final disposal of the suit.

6. The day for the appearance of the defendant shall be fixed with reference to the current business of the Court, the place of residence of the defendant and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

Summons to order defendant to produce documents relied on by him.

7. The summons to appear and answer shall order the defendant to produce all documents in his possession or power upon which he intends to rely in support of his case.

8. Where the summons is for the final disposal of the suit, it shall also direct the defendant to produce, on the day fixed for his appearance, all witnesses upon whose evidence he intends to rely in support of his case.

On issue of summons for final disposal, defendant to be directed to produce his witnesses.

Service of Summons.

9. (1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent to the proper officer to be served by him or one of his subordinates.

Delivery or transmission of summons for service.

(a) The proper officer may be an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him by post or in such other manner as the Court may direct.

10. Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the Court.
 Mode of service.

11. Save as otherwise prescribed, where there are more defendants than one, service of the summons shall be made on each defendant.
 Service on several defendants.

12. Wherever it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.
 Service to be on defendant in person when practicable, or on his agent.

13. (1) In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons is issued, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.
 Service on agent by whom defendant carries on business

(2) For the purpose of this rule the master of a ship shall be deemed to be the agent of the owner or charterer.

14. Where in a suit to obtain relief respecting, or compensation for wrong to, immovable property, service cannot be made on the defendant in person, and the defendant has no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.
 Service on agent in charge in suits for immovable property.

15. Where in any suit the defendant cannot be found and has no agent empowered to accept service of the summons on his behalf, service may be made on any adult male member of the family of the defendant who is residing with him.
 Where service may be on male member of defendant's family.

Explanation—A servant is not a member of the family within the meaning of this rule.

16. Where the serving officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original summons.
 Person served to sign acknowledgment.

17. Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made,
 Procedure when defendant refuses to accept service, or cannot be found.

the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.

18. The serving officer shall, in all cases in which the summons has been served under rule 16, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, a return stating the time when and the manner in which the summons was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the summons.

19. Where a summons is returned under rule 17, the Court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and examination of serving officer, examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further inquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

20. (1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.

(2) Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

(3) Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

21. A summons may be sent by the Court by which it is issued whether within or without the province, either by one of its officers or by post to any Court (not being the High Court) having jurisdiction in the place where the defendant resides.

22. Where a summons issued by any Court established beyond the limits of the towns of Calcutta, Madras, Bombay and Rangoon is to be served within any such limits, it shall be sent to the Court of Small Causes within whose jurisdiction it is to be served.

23. The Court to which a summons is sent under rule 21 or rule 22
 shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue, together with the record (if any) of its proceedings with regard thereto.

24. Where the defendant is confined in a prison, the summons shall
 be delivered or sent by post or otherwise to the officer in charge of the prison for service on the defendant.

25. Where the defendant resides out of British India and has no agent
 in British India empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him by post, if there is postal communication between such place and the place where the Court is situate.

Service in foreign territory through Political Agent or Court.

26. Where—

(a) in the exercise of any foreign jurisdiction vested in His Majesty or in the Governor-General in Council, a Political Agent has been appointed, or a Court has been established or continued, with power to serve a summons issued by a Court under this Code in any foreign territory in which the defendant resides, or

(b) the Governor-General in Council has, by notification in the Gazette of India, declared that any summons so issued may be served by any Court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid,

the summons may be sent to such Political Agent or Court, by post or otherwise, for the purpose of being served upon the defendant; and, if the Political Agent or Court returns the summons with an endorsement signed by such Political Agent or by the Judge or other officer of the Court that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be deemed to be evidence of service.

27. Where the defendant is a public officer (not belonging to His Majesty's military or naval forces or His Majesty's Indian Marine Service), or is the servant of a railway company or local authority, the Court may, if it appears to it that the summons may be most conveniently so served, send it for service on the defendant to the head of the office in which he is employed, together with a copy to be retained by the defendant.

28. Where the defendant is a soldier, the Court shall send the summons for service to his commanding officer together with a copy to be retained by the defendant.

Service on soldiers.

29. (1) Where a summons is delivered or sent to any person for service under rule 24, rule 27 or rule 28, such person shall be bound to serve it, if possible, and to return it under his signature, with the written acknowledgment of the defendant, and such signature shall be deemed to be evidence of service.

(2) Where from any cause service is impossible, the summons shall be returned to the Court with a full statement of such cause and of the steps taken to procure service, and such statement shall be deemed to be evidence of non-service.

30. (1) The Court may, notwithstanding anything hereinbefore contained, substitute for a summons a letter signed by the Judge or such officer as he may appoint in this behalf, where the defendant is in the opinion of the Court, of a rank entitling him to such mark of consideration.

(2) A letter substituted under sub-rule (1) shall contain all the particulars required to be stated in a summons, and, subject to the provisions of sub-rule (3), shall be treated in all respects as a summons.

(3) A letter so substituted may be sent to the defendant by post or by a special messenger selected by the Court, or in any other manner which the Court thinks fit; and where the defendant has an agent empowered to accept service, the letter may be delivered or sent to such agent.

ORDER VI.

PLEADINGS GENERALLY.

Pleading. I "Pleading" shall mean plaint or written statement.

2. Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, numbered consecutively. Dates, sums and numbers shall be expressed in figures.

3 The forms in Appendix A when applicable, and where they are not applicable forms of the like character, as nearly as may be, shall be used for all pleadings.

4. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and item if necessary) shall be stated in the pleading.

5. A further and better statement of the nature of the claim or defence,
 Further and better statement, or further and better particulars of any matter
 or particulars. stated in any pleading, may in all cases be
ordered, upon such terms, as to costs and otherwise, as may be just.

6. Any condition precedent, the performance or occurrence of which is
 Condition precedent. intended to be contested, shall be distinctly
 specified in his pleading by the plaintiff or
defendant, as the case may be ; and, subject thereto an averment of the per-
 formance or occurrence of all conditions precedent necessary for the case
 of the plaintiff or defendant shall be implied in his pleading.

7. No pleading shall, except by way of amendment, raise any new
 Departure. ground of claim or contain any allegation of
 fact inconsistent with the previous pleadings
of the party pleading the same.

8. Where a contract is alleged in any pleading, a bare denial of the
 Denial of contract. same by the opposite party shall be construed
 only as a denial in fact of the express contract
alleged or of the matters of fact from which the same may be implied, and
not as a denial of the legality or sufficiency in law of such contract

9. Wherever the contents of any document are material, it shall be suffi-
 Effect of document to be stated. cient in any pleading to state the effect thereof
 as briefly as possible, without setting out the
whole or any part thereof, unless the precise words of the document or
any part thereof are material.

10. Wherever it is material to allege malice, fraudulent intention,
 Malice, knowledge, etc. knowledge or other condition of the mind of
 any person, it shall be sufficient to allege
the same as a fact without setting out the circumstances from which the
same is to be inferred.

11. Wherever it is material to allege notice to any person of any fact,
 Notice. matter or thing, it shall be sufficient to allege
 such notice as a fact, unless the form or the
precise terms of such notice, or the circumstances from which such notice is
to be inferred, are material.

12. Whenever any contract or any relation between any persons is to
 Implied contract, or relation. be implied from a series of letters or conversa-
 tions or otherwise from a number of circum-
stances it shall be sufficient to allege such contract or relation as a fact, and
to refer generally to such letters, conversations or circumstances without set-
ting them out in detail. And if in such case the person so pleading desires
to rely in the alternative upon more contracts or relations than one as to be
implied from such circumstances, he may state the same in the alternative.

13. Neither party need in any pleading allege any matter of fact which
 Presumptions of law. the law presumes in his favour or as to which
 the burden of proof lies upon the other side
unless the same has first been specifically denied, (e. g., consideration for
a bill of exchange where the plaintiff sues only on the bill, and not for the
consideration as a substantive ground of claim.).

14. Every pleading shall be signed by the party and his pleader (if any): Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf.

15. (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

16. The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the suit.

17. The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

18. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court.

ORDER VII.

PLAINT.

Particulars to be contained in
plaint.

1. The plaint shall contain the following particulars:—

- (a) the name of the Court in which the suit is brought;
- (b) the name, description and place of residence of the plaintiff;
- (c) the name, description and place of residence of the defendant, so far as they can be ascertained;
- (d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;
- (e) the facts constituting the cause of action and when it arose;

- (f) the fact showing that the Court has jurisdiction ;
- (g) the relief which the plaintiff claims ;
- (h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished ; and
- (i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fees, so far as the case admits.

In money suits.

- 2. Where the plaintiff seeks the recovery of money, the plaintiff shall state the precise amount claimed ;

But where the plaintiff sues for mesne-profits, or for an amount which will be found due to him on taking unsettled accounts between him and the defendant, the plaintiff shall state approximately the amount sued for.

- 3. Where the subject-matter of the suit is immoveable property, the plaintiff shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaintiff shall specify such boundaries or numbers.

- 4. Where the plaintiff sues in a representative character, the plaintiff shall show not only that he has an actual existing interest in the subject-matter, but that he has taken the steps (if any) necessary to enable him to institute a suit concerning it.

- 5. The plaintiff shall show that the defendant is or claims to be interested in the subject-matter, and that he is liable to be called upon to answer the plaintiff's demand.

- 6. Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaintiff shall show the ground upon which exemption from such law is claimed.

- 7. Every plaintiff shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement.

- 8. Where the plaintiff seeks relief in respect of several distinct claims or causes of action founded upon separate grounds, they shall be stated as far as may be separately and distinctly.

- 9. (1) The plaintiff shall endorse on the plaintiff, or annex thereto, a list of the documents (if any) which he has produced along with it ; and, if the plaintiff is admitted, shall present as many copies on plain paper of the plaintiff as there are defendants, unless the Court by reason of the length of the plaintiff or the

number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief claimed in the suit, in which case he shall present such statements.

(2) Where the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, such statements shall show in what capacity the plaintiff or defendant sues or is sued

(3) The plaintiff may, by leave of the Court, amend such statements so as to make them correspond with the plaint.

(4) The chief ministerial officer of the Court shall sign such list and copies or statements if, on examination, he finds them to be correct.

10 (1) The plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

(2) On returning a plaint the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.

11. The plaint shall be rejected in the following cases :—

(a) where it does not disclose a cause of action ;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so ;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, or being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so.

(d) where the suit appears from the statement in the plaint to be barred by any law.

12. Where a plaint is rejected the Judge shall record an order to that effect with the reasons for such order.

13. The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

Where rejection of plaint does not preclude presentation of fresh plaint.

Documents relied on in plaint.

14. (1) Where a plaintiff sues upon a document in his possession or power, he shall produce it in Court when the plaint is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint.

Production of document on which plaintiff sues.

(2) Where he relies on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint.

Statement in case of documents not in his possession or power.

15. Where any such document is not in the possession or power of the plaintiff, he shall, if possible, state in whose possession or power it is.

16. Where the suit is founded upon a negotiable instrument, and it is proved that the instrument is lost, and an indemnity is given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may pass such decree as it would have passed if the plaintiff had produced the instrument in Court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint.

17. (1) Save in so far as is otherwise provided by the Bankers' Books Evidence Act, 1891,* where the document on which the plaintiff sues is an entry in a shop-book or other account, in his possession or power, the plaintiff shall produce the book or account at the time of filing the plaint, together with a copy of the entry on which he relies.

(2) The Court, or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification; and, after examining and comparing the copy with the original, shall, if it is found correct, certify it to be so and return the book to the plaintiff and cause the copy to be filed.

18. (1) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(2) Nothing in this rule applies to documents produced for cross-examination of the defendant's witnesses, or in answer to any case set up by the defendant or handed to a witness merely to refresh his memory.

ORDER VIII.

WRITTEN STATEMENT AND SET-OFF.

1. The defendant may, and, if so required by the Court, shall at or before the first hearing or within such time as the Court may permit, present a written statement of his defence.

Written Statement.

* Act XVIII. of 1891.

2. The defendant must raise by his pleading all matters which show

New facts must be specially pleaded.

the suit not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality.

3. It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

Denial to be specific.

4. Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with divers circumstances, it shall not be sufficient to deny it along with those circumstances.

Evasive denial.

5. Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability :

Specific denial.

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

6. (1) Where in a suit for the recovery of money the defendant claims to set off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the Court, and both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, present a written statement containing the particulars of the debt sought to be set off

Particulars of set-off to be given in written statement.

(2) The written statement shall have the same effect as a plaint in a cross suit so as to enable the Court to pronounce a final judgment in respect both of the original claim and of the set-off : but this shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.

Effect of set-off.

(3) The rules relating to a written statement by a defendant apply to a written statement in answer to a claim of set-off.

Illustrations.

(a) A bequeaths Rs. 2,000 to B and appoints C his executor and residuary legatee. B dies and D takes out administration to B's effects. C

pays Rs. 1,000 as surety for D; then D sues C for the legacy. C cannot set off the debt of Rs. 1,000 against the legacy, for neither C nor D fills the same character with respect to the legacy as they fill with respect to the payment of the Rs. 1,000.

(b) A dies intestate and in debt to B. C takes out administration to A's effects and B buys part of the effects from C. In a suit for the purchase-money by C against B, the latter cannot set off the debt against the price, for C fills two different characters, one as the vendor to B, in which he sues B, and the other as representative to A.

(c) A sues B on a bill of exchange. B alleges that A has wrongfully neglected to insure B's goods and is liable to him in compensation which he claims to set off. The amount not being ascertained cannot be set off.

(d) A sues B on a bill of exchange for Rs. 500. B holds a judgment against A for Rs. 1,000. The two claims being both definite pecuniary demands may be set off.

(e) A sues B for compensation on account of trespass. B holds a promissory note for Rs. 1,000 from A and claims to set off that amount against any sum that A may recover in the suit. B may do so, for, as soon as A recovers, both sums are definite pecuniary demands.

(f) A and B sue C for Rs. 1,000. C cannot set off a debt due to him by A alone.

(g) A sues B and C for Rs. 1,000. B cannot set off a debt due to him alone by A.

(h) A owes the partnership firm of B and C Rs. 1,000. B dies, leaving C surviving. A sues C for a debt of Rs. 1,500 due in his separate character. C may set off the debt of Rs. 1,000.

7. Where the defendant relies upon several distinct grounds of defence or set off founded upon separate and distinct facts, they shall be stated, as far as may be separately and distinctly.

8. Any ground of defence which has arisen after the institution of the suit or the presentation of a written statement claiming a set off may be raised by the defendant or plaintiff, as the case may be, in his written statement.

9. No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off shall be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same.

10. Where any party from whom a written statement is so required fails to present the same within the time fixed by the Court, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit.

ORDER IX.

APPEARANCE OF PARTIES AND CONSEQUENCE OF NON-APPEARANCE.

1. On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the Court-house in person or by their respective pleaders, and the suit shall then be heard unless the hearing is adjourned to a future day fixed by the Court.

Parties to appear on day fixed in summons for defendant to appear and answer.

2. Where on the day so fixed it is found that the summons has not been served upon the defendant in consequence of the failure of the plaintiff to pay the court-fee or postal charges (if any) chargeable for such service, the Court may make an order that the suit be dismissed :

Dismissal of suit where summons not served in consequence of plaintiff's failure to pay costs.

Provided that no such order shall be made although the summons has not been served upon the defendant, if on the day fixed for him to appear and answer he attends in person or by agent when he is allowed to appear by agent.

Where neither party appears, suit to be dismissed.

3. Where neither party appears when the suit is called on for hearing, the Court may make an order that the suit be dismissed.

4. Where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit or he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his not paying the court-fee and postal charges (if any) required within the time fixed before the issue of the summons, or for his non-appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.

Plaintiff may bring fresh suit or Court may restore suit to file.

5. (1) Where, after a summons has been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails for a period of one year from the date of the return made to the Court by the officer ordinarily certifying to the Court returns made by the serving officers, to apply for the issue of a fresh summons and to satisfy the Court that he has used his best endeavours to discover the residence of the defendant who has not been served, or that such defendant is avoiding service of process, the Court may make an order that the suit be dismissed as against such defendant.

Dismissal of suit where plaintiff, after summons returned unserved, fails for a year to apply for fresh summons.

(2) In such case the plaintiff may (subject to the law of limitation) bring a fresh suit.

Procedure when only plaintiff appears.

6. (1) Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then—

(a) if it is proved that the summons was duly served, the Court may When summons duly served. proceed *ex parte* ;

(b) if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant ;

(c) If it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons,

the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

(2) Where it is owing to the plaintiff's default that the summons was not duly served or was not served in sufficient time, the Court shall order the plaintiff to pay the costs occasioned by the postponement.

7. Where the Court has adjourned the hearing of the suit *ex parte*, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

8. Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

9. (1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party.

10. Where there are more plaintiffs than one, and one or more of them appear, and the others do not appear, the Court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit to proceed in the same way as if all the plaintiffs had appeared, or make such order as it thinks fit.

11. Where there are more defendants than one, and one or more of them appear and the others do not appear, the suit shall proceed, and the Court shall, at the time of pronouncing judgment, make such order as it thinks fit with respect to the defendants who do not appear.

12. Where a plaintiff or defendant, who has been ordered to appear in

Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person.

person, does not appear in person, or show sufficient cause to the satisfaction of the Court for failing so to appear, he shall be subject to all the provisions of the foregoing rules applicable to plaintiffs and defendants, respectively, who do not appear.

*Setting aside Decrees ex parte.***13. In any case in which a decree is passed *ex parte* against a defendant,**

Setting aside decree *ex parte* against defendant.

he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also.

No decree to be set aside without notice to opposite party.

14. No decree shall be set aside on any such application as aforesaid unless notice thereof has been served on the opposite party.

ORDER X.**EXAMINATION OF PARTIES BY THE COURT.****1. At the first hearing of the suit the Court shall ascertain from**

Ascertainment whether allegations in pleadings are admitted or denied.

each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

2. At the first hearing of the suit, or at any subsequent hearing, any

Oral examination of party, or companion of party.

party appearing in person or present in Court, or any person able to answer any material questions relating to the suit by whom such party or his pleader is accompanied, may be examined orally by the Court; and the Court may, if it thinks fit, put in the course of such examination questions suggested by either party.

Substance of examination to be written.

3. The substance of the examination shall be reduced to writing by the Judge, and shall form part of the record.

4. (1) Where the pleader of any party who appears by a pleader or

Consequence of refusal or inability of pleader to answer.

any such person accompanying a pleader as is referred to in rule 2, refuses or is unable to answer any material question relating to the suit which the Court is of

opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a future day and direct that such party shall appear in person on such day.

(2) If such party fails without lawful excuse to appear in person on the day so appointed, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit.

ORDER XI.

DISCOVERY AND INSPECTION.

1. In any suit the plaintiff or defendant by leave of the Court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose: Provided also that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

2. On an application for leave to deliver interrogatories, the particular interrogatories to be delivered shall be submitted to the Court. In deciding upon such application, the Court shall take into account any offer which may be made by the party sought to be interrogated, to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the Court shall consider necessary either for disposing fairly of the suit or for saving costs.

3. In adjusting the costs of the suit inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the Court, either with or without an application for inquiry that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault.

Form of interrogatories.

4. Interrogatories shall be in Form No. 2 in Appendix C, with such variations as circumstances may require.

5. Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own

name or in the name of any officer or other person, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation or body, and an order may be made accordingly.

6. Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited by answer. *bonâ fide* for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer.

7. Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous; and any application for this purpose may be made within seven days after service of the interrogatories.

8. Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as the Court may allow.

9. An affidavit in answer to interrogatories shall be in Form No. 3 in Appendix C, with such variations as circumstances may require.

10. No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the Court.

11. Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer or answer further, either by affidavit or by *visû voce* examination, as the Court may direct.

12. Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion, be thought fit: Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

13. The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which (if any) of the documents therein mentioned he objects to produce, and it shall be in Form No. 5 in Appendix C, with such variations as circumstances may require.

14. It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in

such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

15. Every party to a suit shall be entitled at any time to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his pleader, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the suit, or that he had some other cause or excuse which the Court shall deem sufficient for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think fit.

16. Notice to any party to produce any documents referred to in his pleading or affidavits shall be in Form No. 7 in Appendix C, with such variations as circumstances may require.

17. The party to whom such notice is given shall, within ten days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents or such of them as he does not object to produce, may be inspected at the office of his pleader, or in the case of bankers' books or other books of account or books in constant use for the purposes of any trade or business, at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice shall be in Form No. 8 in Appendix C, with such variations as circumstances may require.

18. (1) Where the party served with notice under rule 15 omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his pleader, the Court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit: Provided that the order shall not be made when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

(2) Any application to inspect documents, except such as are referred to in the pleadings, particulars or affidavits of the party against whom the application is made or disclosed in his affidavit of documents shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. The Court shall not make such order for inspection of such documents when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or of saving costs.

19. (1) Where inspection of any business books is applied for, the Court may, if it thinks fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of

some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations: Provided that, notwithstanding that such copy has been supplied, the Court may order inspection of the book from which the copy was made.

(2) Where on an application for an order for inspection privilege is claimed for any document, it shall be lawful for the Court to inspect the document for the purpose of deciding as to the validity of the claim of privilege.

(3) The Court may, on the application of any party to a suit at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any one or more specific documents, to be specified in the application, is or are, or has or have at any time been, in his possession or power, and, if not then in his possession, when he parted with the same and what has become thereof. Such application shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has, or has at some time had, in his possession or power the document or documents specified in the application, and that they relate to the matters in question in the suit, or to some of them.

20 Where the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the suit, or that for any other reason it is desirable that any issue or question in dispute in the suit should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

21. Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect, and an order may be made accordingly.

22. Any party may, at the trial of a suit, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer: Provided always that in such case the Court may look at the whole of the answers, and if it shall be of opinion that any others of them are so connected with those put in that the last-mentioned answers ought not to be used without them, it may direct them to be put in.

23. This Order shall apply to minor plaintiffs and defendants, and to the next friends and guardians for the suit of persons under disability.
Order to apply to minors.

ORDER XII.

ADMISSIONS.

1. Any party to a suit may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.
 Notice of admission of case.
2. Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs; and no costs of proving any document shall be allowed unless such notice is given, except where the omission to give the notice is, in the opinion of the Court, a saving of expense.
 Notice to admit documents.
3. A Notice to admit documents shall be in Form No. 9 in Appendix C, with such variations as circumstances may require.
 Form of notice.
4. Any party may, by notice in writing, at any time not later than nine days before the day fixed for the hearing, call on any other party to admit, for the purposes of the suit only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the Court, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs: Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular suit, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice: Provided also that the Court may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.
 Notice to admit facts.
5. A notice to admit facts shall be in Form No. 10 in Appendix C, and admission of facts shall be in Form No. 11 in Appendix C, with such variations as circumstances may require.
 Form of admissions.
6. Any party may at any stage of a suit, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the Court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties: and the Court may upon such application make such order, or give such judgment, as the Court may think just.
 - Judgment on admissions.
7. An affidavit of the pleader or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents or facts, shall be sufficient evidence of such admissions, if evidence thereof is required.
 Affidavit of signature.

8. Notice to produce documents shall be in Form No 12 in Appendix C, with such variations as circumstances may require. An affidavit of the pleader, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served.

9. If a notice to admit or produce specifies documents which are not necessary, the costs occasioned thereby shall be borne by the party giving such notice.

Costs,

ORDER XIII.

PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS.

1. (1) The parties or their pleaders shall produce, at the first hearing of the suit, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court has ordered to be produced.

(2) The Court shall receive the documents so produced : Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

2. No documentary evidence in the possession or power of any party which should have been but has not been produced in accordance with the requirements of rule 1 shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for the non-production thereof ; and the Court receiving any such evidence shall record the reasons for so doing.

3. The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

4. (1) Subject to the provisions of the next following sub rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely :—

- (a) the number and title of the suit,
- (b) the name of the person producing the document,
- (c) the date on which it was produced, and
- (d) a statement of its having been so admitted ;

and the endorsement shall be signed or initialled by the Judge.

(2) where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under the next following rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialled by the Judge.

5. (1) Save in so far as is otherwise provided by the Bankers' Books Endorsements on copies of Evidence Act, 1891,* where a document admitted entries in books, accounts and records. a letter book or a shop-book or other account in current use, the party on whose behalf the book or account is produced may furnish a copy of the entry

(2) Where such a document is an entry in a public record produced from a public office or by a public officer, or an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the Court may require a copy of the entry to be furnished—

(a) where the record, book or account is produced on behalf of a party, then by that party, or

(b) where the record, book or account is produced in obedience to an order of the Court acting of its own motion, then by either or any party.

(3) Where a copy of an entry is furnished under the foregoing provisions of this rule the Court shall, after causing the copy to be examined, compared and certified in manner mentioned in rule 17 of Order VII., mark the entry and cause the book, account or record in which it occurs to be returned to the person producing it.

6 Where a document relied on as evidence by either party is considered by the Court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in clauses (a), (b) and (c) of rule 4, sub-rule (1), together with a statement of his having been rejected, and the endorsement shall be signed or initialled by the Judge.

7. (1) Every document which has been admitted in evidence, or a copy thereof where a copy has been substituted for the original under rule 5, shall form part of the record of the suit.

(2) Documents not admitted in evidence shall not form part of the record and shall be returned to the persons respectively producing them.

8. Notwithstanding anything contained in rule 5 or rule 7 of this Order or in rule 17 of Order VII., the Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit.

9. (1) Any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record shall, unless the document is impounded under rule 8, be entitled to receive back the same,—

(a) where the suit is one in which an appeal is not allowed, when the suit has been disposed of, and

- (b) where the suit is one in which an appeal is allowed, when the Court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or, if an appeal has been preferred, when the appeal has been disposed of :

Provided that a document may be returned at any time earlier than that prescribed by this rule if the person applying therefor delivers to the proper officer a certified copy to be substituted for the original and undertakes to produce the original if required to do so :

Provided also that no document shall be returned which, by force of the decree, has become wholly void or useless.

(2) On the return of a document admitted in evidence a receipt shall be given by the person receiving it.

10. (1) The Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same

(2) Every application made under this rule shall (unless the Court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

(3) Nothing contained in this rule shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit.

11. The provisions herein contained as to documents shall, so far as Provisions as to documents may be, apply to all other material objects applied to material objects. producible as evidence.

ORDER XIV.

SETTLEMENT OF ISSUES AND DETERMINATION OF SUIT ON ISSUES OF LAW OR ON ISSUES AGREED UPON.

1. (1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

Framing of issues.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

(4) Issues are of two kinds : (a) issues of fact, (b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.

2. Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

Materials from which issues may be framed. 3. The Court may frame the issues from all or any of the following materials :—

- (a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties ;
- (b) allegations made in the pleadings or in answers to interrogatories delivered in the suit ;
- (c) the contents of documents produced by either party.

4. Where the Court is of opinion that the issues cannot be correctly framed without the examination of some person not before the Court or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, and may (subject to any law for the time being in force) compel the attendance of any person or the production of any document by the person in whose possession or power it is by summons or other process.

5. (1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

6. Where the parties to a suit are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing that, upon the finding of the Court in the affirmative or the negative of such issue,—

- (a) a sum of money specified in the agreement or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement ;

- (b) some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct; or
- (c) one or more of the parties shall do or abstain from doing some particular act specified in the agreement and relating to the matter in dispute.

Court, if satisfied that agreement was executed in good faith, may pronounce judgment.

7. Where the Court is satisfied, after making such inquiry as it deems proper,—

- (a) that the agreement was duly executed by the parties,
- (b) that they have a substantial interest in the decision of such question as aforesaid, and
- (c) that the same is fit to be tried and decided,

it shall proceed to record and try the issue and state its finding or decision thereon in the same manner as if the issue had been framed by the Court;

and shall, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement, and, upon the judgment so pronounced, a decree shall follow.

ORDER XV.

DISPOSAL OF THE SUIT AT THE FIRST HEARING.

1. Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.

2. Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or of fact, the Court may at once pronounce judgment for or against such defendant and the suit shall proceed only against the other defendants.

3. (1) Where the parties are at issue on some question of law or of fact, and issues have been framed by the Court as hereinbefore provided, if the Court is satisfied that no further argument or evidence than the parties can at once adduce is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues, and, if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit:

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present and none of them objects.

(2) Where the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument as the case requires.

4. Where the summons has been issued for the final disposal of the suit and either party fails without sufficient cause to produce the evidence on which he relies, the Court may at once pronounce judgment, or may, if it thinks fit, after framing and recording issues, adjourn the suit for the production of such evidence as may be necessary for its decision upon such issues.

ORDER XVI.

SUMMONING AND ATTENDANCE OF WITNESSES.

1. At any time after the suit is instituted, the parties may obtain, on application to the Court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required either to give evidence or to produce documents.

2. (1) The party applying for a summons shall, before the summons is granted and within a period to be fixed, pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance.

(2) In determining the amount payable under this rule, the Court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

(3) Where the Court is subordinate to a High Court regard shall be had, in fixing the scale of such expenses, to any rules made in that behalf.

3. The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

4. (1) Where it appears to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses or reasonable remuneration, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and, in case of default in payment, may order such sum to be levied by attachment and sale of the moveable property of the party obtaining the summons; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

(2) Where it is necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the moveable property of such party; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

5. Every summons for the attendance of a person to give evidence or to produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document, which the person summoned is called on to produce, shall be described in the summons with reasonable accuracy.

6. Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

7. Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his possession or power.

8. Every summons under this Order shall be served as nearly as may be in the same manner as a summons to a defendant, and the rules in Order V. as to proof of service shall apply in the case of all summonses served under this rule.

9. Service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

10. (1) Where a person to whom a summons has been issued either to attend to give evidence or to produce a document fails to attend or to produce the document in compliance with such summons, the Court shall, if the certificate of the serving-officer has not been verified by affidavit, and may, if it has been so verified, examine the serving-officer on oath, or cause him to be so examined by another Court, touching the service or non-service of the summons.

(2) Where the Court sees reason to believe that such evidence or production is material and that such person has, without lawful excuse, failed to attend or to produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring

him to attend to give evidence or to produce the document at a time and place to be named therein ; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides

(3) In lieu of or at the time of issuing such proclamation, or at any time afterwards the Court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under rule 12 :

Provided that no Court of Small Causes shall make an order for the attachment of immoveable property.

It witness appears, attachment may be withdrawn.

11. Where, at any time after the attachment of his property, such person appears and satisfies the Court,—

- (a) that he did not, without lawful excuse, fail to comply with the summons or intentionally avoid service, and,
- (b) where he has failed to attend at the time and place named in a proclamation issued under the last preceding rule, that he had no notice of such proclamation in time to attend,

the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

12. The Court may, where such person does not appear, or appears but fails so to satisfy the Court, impose upon him such fine not exceeding five hundred rupees as it thinks fit, having regard to his condition in life and all the circumstances of the case, and may order his property, or any part thereof, to be attached and sold or, if already attached under rule 10, to be sold for the purpose of satisfying all costs of such attachment, together with the amount of the said fine, if any :

Provided that, if the person whose attendance is required pays into Court the costs and fine aforesaid, the Court shall order the property to be released from attachment.

13. The provisions with regard to the attachment and sale of property in the execution of a decree shall, so far as they are applicable, be deemed to apply to any attachment and sale under this Order as if the person whose property is so attached were a judgment-debtor.

Mode of attachment.

14. Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary to examine any person other than a party to the suit and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

Court may of its own accord summon as witnesses strangers to suit.

15. Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit shall attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document shall either attend to produce it, or cause it to be produced, at such time and place.

16 (1) A person so summoned and attending shall, unless the Court otherwise directs, attend at each hearing until the suit has been disposed of
When they may depart.

(2) On the application of either party and the payment through the Court of all necessary expenses (if any) the Court may require any person so summoned and attending to furnish security to attend at the next or any other hearing or until the suit is disposed of and, in default of his furnishing such security, may order him to be detained in the civil prison.

17 The provisions of rules 10 to 13 shall, so far as they are applicable, be deemed to apply to any person who having attended in compliance with a summons departs, without lawful excuse, in contravention of rule 16.
Application of rules 10 to 13.

18. Where any person arrested under a warrant is brought before the Court in custody and cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and, on such bail or security being given, may release him, and, in default of his giving such bail or security, may order him to be detained in the civil prison.
Procedure where witness apprehended cannot give evidence or produce document.

19. No one shall be ordered to attend in person to give evidence unless he resides—
No witness to be ordered to attend in person unless resident within certain limits.

(a) within the local limits of the Court's ordinary original jurisdiction, or

(b) without such limits but at a place less than fifty or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than two hundred miles distance from the Court-house.

20. Where any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his possession or power, the Court may pronounce judgment against him or make such order in relation to the suit as it thinks fit.
Consequence of refusal of party to give evidence when called on by Court.

21. Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as they are applicable.
Rules as to witnesses to apply to parties summoned.

ORDER XVII.

ADJOURNMENTS.

1. (1) The Court may, if sufficient cause is shown, at any stage of the Court may grant time and adjourn hearing. suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit.

(2) In every such case the Court shall fix a day for the further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment :
Costs of adjournment.

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded.

2. Where on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX. or make such other order as it thinks fit.
Procedure if parties fail to appear on day fixed.

3. Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith.
Court may proceed notwithstanding either party fails to produce evidence, etc.

ORDER XVIII.

HEARING OF THE SUIT AND EXAMINATION OF WITNESSES.

1. The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.
Right to begin.

2. (1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.
Statement and production of evidence.

(2) The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case.

(3) The party beginning may then reply generally on the whole case.

3. Where there are several issues, the burden of proving some of which

Evidence where several issues. lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.

4. The evidence of the witnesses in attendance shall be taken orally

Witnesses to be examined in open Court. in open Court in the presence and under the personal direction and superintendence of the Judge.

5. In cases in which an appeal is allowed the evidence of each witness

How evidence shall be taken in appealable cases. shall be taken down in writing, in the language of the Court, by or in the presence and under the personal direction and superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over in the presence of the Judge and of the witness, and the Judge shall, if necessary, correct the same, and shall sign it.

6. Where the evidence is taken down in a language different from

When deposition to be interpreted. that in which it is given, and the witness does not understand the language in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it is given.

7. Evidence taken down under section 138 shall be in the form prescribed by rule 5 and shall be read over and

Evidence under section 138. signed and, as occasion may require, interpreted and corrected as if it were evidence taken down under that rule.

8. Where the evidence is not taken down in writing by the Judge,

Memorandum when evidence not taken down by Judge. he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes, and such memorandum shall be written and signed by the Judge and shall form part of the record.

9. Where English is not the language of the Court, but all the parties

When evidence may be taken in English. to the suit who appear in person, and the pleaders of such as appear by pleaders, do not object to have such evidence as is given in English taken down in English, the Judge may so take it down.

10. The Court may, of its own motion or on the application of any

Any particular question and answer may be taken down. party or his pleader, take down any particular question and answer, or any objection to any question, if there appears to be any special reason for so doing.

11. Where any question put to a witness is objected to by a party or

Questions objected to and allowed by Court. his pleader, and the Court allows the same to be put, the Judge shall take down the question, the answer, the objection and the name of the person making it, together with the decision of the Court thereon.

Remarks on demeanour of witnesses.

12. The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

13. In cases in which an appeal is not allowed, it shall not be necessary to take down the evidence of the witnesses in writing at length; but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Judge and shall form part of the record.

14. (1) Where the Judge is unable to make a memorandum as required by this Order, he shall cause the reason of such inability to be recorded, and shall cause the memorandum to be made in writing from his dictation in open Court.

(2) Every memorandum so made shall form part of the record.

15. (1) Where a Judge is prevented by death, transfer or other cause from concluding the trial of a suit, his successor may deal with any evidence or memorandum taken down or made under the foregoing rules as if such evidence or memorandum had been taken down or made by him or under his direction under the said rules and may proceed with the suit from the stage at which his predecessor left it.

(2) The provisions of sub-rule (1) shall, so far as they are applicable, be deemed to apply to evidence taken in a suit transferred under section 24.

16. (1) Where a witness is about to leave the jurisdiction of the Court, or other sufficient cause is shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may upon the application of any party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided.

(2) Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

(3) The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and the Judge shall, if necessary, correct the same and shall sign it, and it may then be read at any hearing of the suit.

17. The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.

Power of Court to inspect.

18. The Court may at any stage of a suit inspect any property or thing concerning which any question may arise.

ORDER XIX.

AFFIDAVITS.

1. Any Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable :

Provided that where it appears to the Court that either party *bond fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

2 (1) Upon any application evidence may be given by affidavit, but the Court may at the instance of either party, order the attendance for cross-examination of the deponent.

(2) Such attendance shall be in Court, unless the deponent is exempted from personal appearance in Court, or the Court otherwise directs.

3 (1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted; provided that the grounds thereof are stated.

(2) The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party filing the same.

ORDER XX.

JUDGMENT AND DECREE.

1. The Court, after the case has been heard, shall pronounce judgment in open Court either at once or on some future day, of which due notice shall be given to the parties or their pleaders.

Power to pronounce judgment written by judge's predecessor.

2. A Judge may pronounce a judgment written but not pronounced by his predecessor.

3. The judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it and, when once signed, shall not afterwards be altered or added to, save as provided by section 152 or on review.

4. (1) Judgments of a Court of Small Causes need not contain more than the points for determination and the decision thereon.

(2) Judgments of other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

5. In suits in which issues have been framed, the Court shall state its Court to state its decision on finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

6. (1) The decree shall agree with the judgment: it shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit.

(2) The decree shall also state the amount of costs incurred in the suit, and by whom or out of what property and in what proportions such costs are to be paid.

(3) The Court may direct that the costs payable to one party by the other shall be set off against any sum which is admitted or found to be due from the former to the latter.

7. The decree shall bear date the day on which the judgment was pronounced, and, when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree.

8. Where a Judge has vacated office after pronouncing judgment but without signing the decree, a decree drawn up in accordance with such judgment may be signed by his successor or, if the Court has ceased to exist, by the Judge of any Court to which such Court was subordinate.

9. Where the subject-matter of the suit is immoveable property, the decree shall contain a description of such moveable property. property sufficient to identify the same, and where such property can be identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers.

10. Where the suit is for moveable property, and the decree is for the delivery of such property, the decree shall also state the amount of money to be paid as an alternative if delivery cannot be had.

11. (1) Where and in so far as a decree is for the payment of money, the Court may for any sufficient reason at the time of passing the decree order that payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable.

(2) After the passing of any such decree the Court may, on the application of the judgment-debtor and with the consent of the decree-holder, order that payment of the amount decreed shall be postponed or shall be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment-debtor, or the taking of security from him, or otherwise, as it thinks fit.

12. (1) Where a suit is for the recovery of possession of immoveable property and for rent or mesne-profits, the Court may pass a decree—

- (a) for the possession of the property ;
- (b) for the rent or mesne-profits which have accrued on the property during a period prior to the institution of the suit or directing an inquiry as to such rent or mesne-profits ;
- (c) directing an inquiry as to rent or mesne-profits from the institution of the suit until—
 - (i) the delivery of possession to the decree-holder,
 - (ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court, or
 - (iii) the expiration of the three years from the date of the decree, whichever event first occurs.

(2) Where an inquiry is directed under clause (b) or clause (c) a final decree in respect of the rent or mesne-profits shall be passed in accordance with the result of such inquiry.

13. (1) Where a suit is for an account of any property and for its due administration under the decree of the Court, the Court shall, before passing the final decree, pass a preliminary decree ordering such accounts and inquiries to be taken and made, and given such other directions as it thinks fit.

(2) In the administration by the Court of the property of any deceased person, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities proveable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being within the local limits of the Court in which the administration-suit is pending with respect to the estates of persons adjudged or declared insolvent ; and all persons, who in any such case would be entitled to be paid out of such property, may come in under the preliminary decree, and make such claims against the same as they may respectively be entitled to by virtue of this Code.

14. (1) Where the Court decrees a claim to pre-emption in respect of a particular sale of property and the purchase-money has not been paid into Court, the decree shall—

- (a) specify a day on or before which the purchase-money shall be so paid, and
- (b) direct that on payment into Court of such purchase-money, together with the costs (if any) decreed against the plaintiff, on or before the day referred to in clause (a), the defendant shall deliver possession of the property to the plaintiff, whose title thereto shall be deemed to have accrued from the date of such payment, but that, if the purchase-money and the costs (if any) are not so paid, the suit shall be dismissed with costs.

(2) Where the Court has adjudicated upon rival claims to pre-emption, the decree shall direct,—

- (a) if and in so far as the claims decreed are equal in degree, that the claim of each pre-emptor complying with the provisions of sub-rule (1) shall take effect in respect of a proportionate share of the property including any proportionate share in respect of which the claim of any pre-emptor failing to comply with the said provisions would, but for such default, have taken effect; and,
- (b) if and in so far as the claims decreed are different in degree, that the claim of the inferior pre-emptor shall not take effect unless and until the superior pre-emptor has failed to comply with the said provisions.

15. Where a suit is for the dissolution of a partnership, or the taking of partnership accounts, the Court, before passing a final decree, may pass a preliminary decree declaring the proportionate shares of the parties, fixing the day on which the partnership shall stand dissolved or be deemed to have been dissolved, and directing such accounts to be taken, and other acts to be done, as it thinks fit.

16. In a suit for an account of pecuniary transactions between a principal and an agent, and in any other suit not hereinbefore provided for where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before passing its final decree pass a preliminary decree directing such accounts to be taken as it thinks fit.

17. The Court may either by the decree directing an account to be taken or by any subsequent order give special directions as to accounts, the account is to be taken or vouched and in particular may direct that in taking the account the books of account in which the accounts in question have been kept shall be taken as *prima facie* evidence of the truth of the matters therein contained with liberty to the parties interested to take such objection thereto as they may be advised.

18. Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then,—

(1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54;

(2) if and in so far as such decree relates to any other immoveable property or to moveable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary

decree declaring the rights of the several parties interested in the property and giving such further directions as may be required.

19. (1) Where the defendant has been allowed a set-off against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

Decree when set-off is allowed. (2) Any decree passed in a suit in which a set-off is claimed shall be subject to the same provisions in respect of appeal to which it would have been subject if no set-off had been claimed.

Appeal from decree relating to set-off. (3) The provisions of this rule shall apply whether the set-off is admissible under rule 6 of Order VIII or otherwise.

Certified copies of judgment and decree to be furnished. 20. Certified copies of the judgment and decree shall be furnished to the parties on application to the Court, and at their expense

ORDER XXI.

EXECUTION OF DECREES AND ORDERS.

Payment under Decree.

Modes of paying money under decree. 1. (1) All money payable under a decree shall be paid as follows, namely:—

- (a) into the Court whose duty it is to execute the decree; or
- (b) out of Court to the decree-holder; or
- (c) otherwise as the Court which made the decree directs.

(2) Where any payment is made under clause (a) of sub-rule (1) notice of such payment shall be given to the decree-holder.

2. (1) Where any money payable under a decree of any kind is paid out of Court or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.

Payment out of Court to decree-holder. (2) The judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

(3) A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognized by any Court executing the decree.

Courts executing Decrees.

3. Where Immoveable property forms one estate or tenure situate within the local limits of the jurisdiction of two or more Courts, any one of such Courts may attach and sell the entire estate or tenure.

Lands situate in more than one jurisdiction.

4. Where a decree has been passed in a suit of which the value as set forth in the plaint did not exceed two thousand rupees and which, as regards its subject-matter, is not excepted by the law for the time being in force from the cognizance of either a Presidency or a Provincial Court of Small Causes, and the Court which passed it wishes it to be executed in Calcutta, Madras, Bombay or Rangoon, such Court may send to the Court of Small Causes in Calcutta, Madras, Bombay or Rangoon, as the case may be, the copies and certificates mentioned in rule 6; and such Court of Small Causes shall thereupon execute the decree as if it had been passed by itself.

Transfer to Court of Small Causes.

5. Where the Court to which a decree is to be sent for execution is situate within the same district as the Court which passed such decree, such Court shall send the same directly to the former Court. But, where the Court to which the decree is to be sent for execution is situate in a different district, the Court which passed it shall send it to the District Court of the district in which the decree is to be executed.

Mode of transfer.

Procedure where Court desires that its own decree shall be executed by another Court.

6. The Court sending a decree for execution shall send—

(a) a copy of the decree;

(b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unsatisfied; and

(c) a copy of any order for the execution of the decree, or, if no such order has been made, a certificate to that effect.

7. The Court to which a decree is so sent shall cause such copies and certificates to be filed, without any further proof of the decree or order for execution, or of the copies thereof unless the Court, for any special reasons to be recorded under the hand of the Judge, requires such proof.

Court receiving copies of decree, etc., to file same without proof.

8. Where such copies are so filed, the decree or order may, if the Court to which it is sent is the District Court, be executed by such Court or be transferred for execution to any subordinate Court of competent jurisdiction.

Execution of decree or order by Court to which it is sent.

9. Where the Court to which the decree is sent for execution is a High Court, the decree shall be executed by such Court, the decree transferred by other Court in the same manner as if it had been passed by such Court in the exercise of its ordinary original civil jurisdiction.

Application for execution.

10. Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court then to such Court or to the proper officer thereof.

11. (1) Where a decree is for the payment of money the Court may, on the oral application of the decree-holder at the time of the passing of the decree, order immediate execution thereof by the arrest of the judgment-debtor, prior to the preparation of a warrant if he is within the precincts of the Court.

(2) Save as otherwise provided by sub-rule (1), every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely :—

- (a) the number of the suit ;
- (b) the names of the parties ;
- (c) the date of the decree ;
- (d) whether any appeal has been preferred from the decree ;
- (e) whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree ;
- (f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results ;
- (g) the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross-decree, whether passed before or after the date of the decree sought to be executed ;
- (h) the amount of the costs (if any) awarded ;
- (i) the name of the person against whom execution of the decree is sought ; and
- (j) the mode in which the assistance of the Court is required, whether—
 - (i) by the delivery of any property specifically decreed ;
 - (ii) by the attachment and sale, or by the sale without attachment, of any property ;

- (iii) by the arrest and detention in prison of any person ;
- (iv) by the appointment of a receiver ;
- (v) otherwise, as the nature of the relief granted may require.

(3) The Court to which an application is made under sub-rule (2) may require the applicant to produce a certified copy of the decree.

12 Where an application is made for the attachment of any moveable property belonging to a judgment-debtor but not in his possession, the decree-holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same.

Application for attachment of moveable property not in judgment-debtor's possession.

13. Where an application is made for the attachment of any immoveable property belonging to a judgment-debtor, it shall contain at the foot—

- (a) a description of such property sufficient to identify the same and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, a specification of such boundaries or numbers ; and
- (b) a specification of the judgment-debtor's share or interest in such property to the best of the belief of the applicant, and so far as he has been able to ascertain the same.

14. Where an application is made for the attachment of any land which is registered in the office of the Collector, the Court may require the applicant to produce a certified extract from the register of such office, specifying the persons registered as proprietors of, or as possessing, any transferable interest in, the land or its revenue, or as liable to pay revenue for the land, and the shares of the registered proprietors.

15. (1) Where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the legal representatives of the deceased.

(2) Where the Court sees sufficient cause for allowing the decree to be executed on an application made under this rule it shall make such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

16. Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it ; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder.

Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution :

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others.

17. (1) On receiving application for the execution of a decree as Procedure on receiving application for execution of decree. provided by rule 11, sub-rule (2), the Court shall ascertain whether such of the requirements of rules 11 to 14 as may be applicable to the case have been complied with ; and, if they have not been complied with, the Court may reject the application, or may allow the defect to be remedied then and there or within a time to be fixed by it.

(2) Where an application is amended under the provisions of sub-rule (1), it shall be deemed to have been an application in accordance with law and presented on the date when it was first presented.

(3) Every amendment made under this rule shall be signed or initialled by the Judge.

(4) When the application is admitted, the Court shall enter in the proper register a note of the application and the date on which it was made, and shall, subject to the provisions hereinafter contained, order execution of the decree according to the nature of the application :

Provided that, in the case of a decree for the payment of money, the value of the property attached shall, as nearly as may be, correspond with the amount due under the decree.

18 (1) Where applications are made to a Court for the execution of Execution in case of cross-decrees cross-decrees in separate suits for the payment of two sums of money passed between the same parties and capable of execution at the same time by such Court, then—

(a) if the two sums are equal, satisfaction shall be entered upon both decrees ; and

(b) if the two sums are unequal, execution may be taken out only by the holder of the decree for the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.

(2) This rule shall be deemed to apply where either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.

(3) This rule shall not be deemed to apply unless—

(a) the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other and each party fills the same character in both suits ; and

(b) the sums due under the decrees are definite.

(4) The holder of a decree passed against several persons jointly and severally may treat it as a cross-decree in relation to a decree passed against him singly in favour of one or more of such persons.

Illustrations.

(a) A holds a decree against B for Rs. 1,000. B holds a decree against A for the payment of Rs. 1,000 in case A fails to deliver certain goods at a future day. B cannot treat his decree as a cross-decree under this rule.

BLAN (b) A and B co-plaintiffs, obtain a decree for Rs. 1,000 against C, and C obtains a decree for Rs. 1,000 against B. C cannot treat his decree as a cross-decree under this rule.

(c) A obtains a decree against B for Rs. 1,000. C, who is a trustee for B, obtains a decree on behalf of B against A for Rs. 1,000. B cannot treat C's decree as a cross-decree under this rule.

(d) A, B, C, D and E are jointly and severally liable for Rs. 1,000 under a decree obtained by F. A obtains a decree for Rs. 100 against F singly and applies for execution to the Court in which the joint-decree is being executed. F may treat his joint-decree as a cross-decree under this rule.

19. Where application is made to a Court for the execution of a decree under which two parties are entitled to recover sums of money from each other, then,—

Execution in case of cross-claims under same decree.

(a) if the two sums are equal, satisfaction for both shall be entered upon the decree; and,

(b) if the two sums are unequal, execution may be taken out only by the party entitled to the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered upon the decree.

20. The provisions contained in rules 18 and 19 shall apply to decrees for sale in enforcement of a mortgage or charge.

Cross-decrees and cross-claims in mortgage suits.

21. The Court may, in its discretion refuse execution at the same time against the person and property of the judgment-debtor.

Simultaneous execution.

22. (1) Where an application for execution is made—

Notice to show cause against execution in certain cases.

(a) more than one year after the date of the decree, or

(b) against the legal representative of a party to the decree, the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him :

Provided that no such notice shall be necessary in consequence of more than one year having elapsed between the date of the decree and the application for execution if the application is made within one year from the date of the last order against the party against whom execution is applied

for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor, if upon a previous application for execution against the same person the Court has ordered execution to issue against him.

(2) Nothing in the foregoing sub-rule shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.

23. (1) Where the person to whom notice is issued under the last preceding rule does not appear or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed.

(2) Where such person offers any objection to the execution of the decree, the Court shall consider such objection and make such order as it thinks fit.

PROCESS FOR EXECUTION.

24. (1) When the preliminary measures (if any) required by the foregoing rules have been taken, the Court shall, unless it sees cause to the contrary, issue its process for the execution of the decree.

(2) Every such process shall bear date the day on which it is issued, and shall be signed by the Judge or such officer as the Court may appoint in this behalf, and shall be sealed with the seal of the Court and delivered to the proper officer to be executed.

(3) In every such process a day shall be specified on or before which it shall be executed.

25. (1) The officer entrusted with the execution of the process shall endorse thereon the day on, and the manner in, which it was executed, and, if the latest day specified in the process for the return thereof has been exceeded, the reason of the delay, or, if it was not executed, the reason why it was not executed, and shall return the process with such endorsement to the Court.

(2) Where the endorsement is to the effect that such officer is unable to execute the process, the Court shall examine him touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability and shall record the result.

STAY OF EXECUTION.

26. The Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the

decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or appellate Court if execution had been issued thereby, or if application for execution had been made thereto.

(2) Where the property or person of the judgment-debtor has been seized under an execution, the Court which issued the execution may order the restitution of such property or the discharge of such person pending the result of the application.

(3) Before making an order to stay execution or for the restitution of property or the discharge of the judgment-debtor, the Court may require such security from or impose such conditions upon, the judgment-debtor as it thinks fit

27. No order of restitution or discharge under rule 26 shall prevent the property or person of a judgment-debtor from being retaken in execution of the decree sent for execution.

Liability of judgment-debtor discharged.

28. Any order of the Court by which the decree was passed, or of such Court of appeal as aforesaid, in relation to the execution of such decree, shall be binding upon the Court to which the decree was sent for execution.

Order of Court which passed decree or of appellate Court to be binding upon Court applied to.

29. Where a suit is pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided.

Stay of execution pending suit between decree-holder and judgment-debtor.

MODE OF EXECUTION.

30. Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgment-debtor or by the attachment and sale of his property, or by both.

Decree for payment of money.

31. (1) Where the decree is for any specific moveable, or for any share in a specific moveable, it may be executed by the seizure, if practicable, of the moveable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the detention in the civil prison of the judgment-debtor, or by the attachment of his property, or by both.

Decree for specific moveable property.

(2) Where any attachment under sub-rule (1) has remained in force for six months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed by the decree to be paid as an alternative to delivery of moveable property, such amount, and, in

other cases, such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(3) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of six months from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease.

32. (1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced by his detention in the civil prison, or by the attachment of his property, or by both.

(2) Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or, with the leave of the Court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.

(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for one year, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of one year from the date of the attachment, no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.

Illustration.

A, a person of little substance, erects a building which renders uninhabitable a family mansion belonging to B. A, in spite of his detention in prison and the attachment of his property declines to obey a decree obtained against him by B and directing him to remove the building. The Court is of opinion that no sum realizable by the sale of A's property would adequately compensate B for the depreciation in the value of his mansion. B may apply to the Court to remove the building and may recover the cost of such removal from A in the execution-proceedings.

33. (1) Notwithstanding anything in rule 32, the Court, either at the time of passing a decree for the restitution of conjugal rights or at any time afterwards, may order that the decree shall not be executed by detention in prison.

Discretion of Court in executing decrees for restitution of conjugal rights.

(2) Where the Court has made an order under sub rule (1), and the decree-holder is the wife, it may order that, in the event of the decree not being obeyed within such period as may be fixed in this behalf, the judgment-debtor shall make to the decree-holder such periodical payments as may be just, and, if it thinks fit, require that the judgment-debtor shall, to its satisfaction, secure to the decree-holder such periodical payments.

(3) The Court may from time to time vary or modify any order made under sub-rule (2) for the periodical payment of money, either by altering the times of payment or by increasing or diminishing the amount, or may temporarily suspend the same as to the whole or any part of the money so ordered to be paid, and again revive the same, either wholly or in part as it may think just.

(4) Any money ordered to be paid under this rule may be recovered as though it were payable under a decree for the payment of money.

34. (1) Where a decree is for the execution of a document or, for the endorsement of a negotiable instrument and the judgment-debtor neglects or refuses to obey the decree, the decree-holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the Court.

Decree for execution of document, or endorsement of negotiable instrument.

(2) The Court shall thereupon cause the draft, to be served on the judgment-debtor together with a notice requiring his objections (if any) to be made within such time as the Court fixes in this behalf.

(3) Where the judgment-debtor objects to the draft, his objections shall be stated in writing within such time, and the Court shall make such order approving or altering the draft, as it thinks fit.

(4) The decree-holder shall deliver to the Court a copy of the draft with such alterations (if any) as the Court may have directed upon the proper stamp-paper if a stamp is required by the law for the time being in force; and the Judge or such officer as may be appointed in this behalf shall execute the document so delivered.

(5) The execution of a document or the endorsement of a negotiable instrument under this rule may be in the following form, namely:—

“ C. D., Judge of the Court of
(or as the case may be), for A. B., in a suit by E. F. against A. B ”
and shall have the same effect as the execution of the document or the endorsement of the negotiable instrument by the party ordered to execute or endorse the same.

(6) The Court, or such officer as it may appoint in this behalf, shall cause the document to be registered if its registration is required by the law for the time being in force or the decree-holder desires to have it registered, and may make such order as it thinks fit as to the payment of the expenses of the registration.

35. (1) Where a decree is for the delivery of any immoveable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.

(2) Where a decree is for the joint possession of immoveable property such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum, or other customary mode, at some convenient place, the substance of the decree.

(3) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.

36. Where a decree is for the delivery of any immoveable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, the substance of the decree in regard to the property.

Arrest and detention in the civil prison.

37. (1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court may, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison.

(2) Where appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor.

38. Every warrant for the arrest of a judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs (if any) to which he is liable, be sooner paid.

39. (1) No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into Court such sum as the Judge thinks sufficient for the subsistence of the judgment-debtor from the time of his arrest until he can be brought before the Court.

(3) Where a judgment-debtor is committed to the civil prison in execution of a decree the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the scales fixed under section 57 or, where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

(3) 'The monthly allowance fixed by the Court shall be supplied by the party on whose application the judgment-debtor has been arrested by monthly payment in advance before the first day of each month.

(4) The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the judgment-debtor is committed to the civil prison, and the subsequent payments (if any) shall be made to the officer in charge of the civil prison.

(5) Sums disbursed by the decree-holder for the subsistence of the judgment-debtor in the civil prison shall be deemed to be costs in the suit :

Provided that the judgment-debtor shall not be detained in the civil prison or arrested on account of any sum so disbursed.

40. (1) Where a judgment-debtor appears before the Court in obedience to a notice issued under rule 37, or is brought before the Court after being arrested in execution of a decree for the payment of money and it appears to the Court that the judgment debtor is unable from poverty or other sufficient cause to pay the amount of the decree or, if that amount is payable by instalments, the amount of any instalment thereof, the Court may, upon such terms (if any) as it thinks fit, make an order disallowing the application for his arrest and detention, or directing his release, as the case may be.

(2) Before making an order under sub rule (1), the Court may take into consideration any allegation of the decree-holder touching any of the following matters namely :—

- (a) the decree being for a sum for which the judgment-debtor was bound in any fiduciary capacity to account ;
- (b) the transfer, concealment or removal by the judgment-debtor of any part of his property after the date of the institution of the suit in which the decree was passed, or the commission by him after that date of any other act of bad faith in relation to his property, with the object or effect of obstructing or delaying the decree-holder in the execution of the decree ;
- (c) any undue preference given by the judgment-debtor to any of his other creditors ;
- (d) refusal or neglect on the part of the judgment-debtor to pay the amount of the decree or some part thereof when he has, or since the date of the decree has had, the means of paying it ;
- (e) the likelihood of the judgment-debtor absconding or leaving the jurisdiction of the Court with the object or effect of obstructing or delaying the decree-holder in the execution of the decree.

(3) While any of the matters mentioned in sub-rule (2) are being considered, the Court may, in its discretion, order the judgment-debtor to be detained in the civil prison, or leave him in the custody of an officer of the Court, or release him on his furnishing security, to the satisfaction of the Court, for his appearance when required by the Court.

(4) A judgment-debtor released under this rule may be re-arrested.

(5) Where the Court does not make an order under sub-rule (1), it shall cause the judgment-debtor to be arrested, if he has not already been arrested and, subject to the other provisions of this Code, commit him to the civil prison.

Attachment of property.

Examination of judgment-debtor as to his property.

41. Where a decree is for the payment of money the decree-holder may apply to the Court for an order that—

(a) the judgment-debtor, or

(b) in the case of a corporation, any officer thereof, or

(c) any other person,

be orally examined as to whether any or what debts are owing to the judgment-debtor and whether the judgment-debtor has any and what other property or means of satisfying the decree; and the Court may make an order for the attendance and examination of such judgment-debtor, or officer or other person, and for the production of any books or documents.

42. Where a decree directs an inquiry as to rent or mesne-profits or any other matter, the property of the judgment-debtor may before the amount due from him has been ascertained, be attached, as in the case of an ordinary decree for the payment of money.

43. Where the property to be attached is moveable property other than agricultural produce, in the possession of the judgment debtor, the attachment shall be made by actual seizure and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof;

Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once.

44. Where the property to be attached is agricultural produce, the attachment shall be made by affixing a copy of the warrant of attachment,—

Attachment of agricultural produce.

(a) where such produce is a growing crop, on the land on which such crop has grown, or

(b) where such produce has been cut or gathered, on the threshing-floor or place for treading out grain or the like or fodder-stack on or in which it is deposited,

and another copy on the outer door or on some other conspicuous part of the house in which the judgment-debtor ordinarily resides or, with the leave of the Court, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain or in which he is known to have last resided or carried on business or personally worked for gain; and the produce shall thereupon be deemed to have passed into the possession of the Court.

45. (1) Where agricultural produce is attached, the Court shall make Provisions as to agricultural such arrangements for the custody thereof as produce under attachment. it may deem sufficient and, for the purpose of enabling the Court to make such arrangements, every application for the attachment of a growing crop shall specify the time at which it is likely to be fit to be cut or gathered.

(2) Subject to such conditions as may be imposed by the Court in this behalf either in the order of attachment or in any subsequent order, the judgment-debtor may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it; and if the judgment-debtor fails to do all or any of such acts, the decree-holder may with the permission of the Court and subject to the like conditions, do all or any of them either by himself or by any person appointed by him in this behalf and the costs incurred by the decree-holder shall be recoverable from the judgment-debtor as if they were included in, or formed part of, the decree.

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been severed from the soil.

(4) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may, in its discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.

(5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

Attachment of debt, share and other property not in possession of judgment-debtor.

46. (1) In the case of—

- (a) a debt not secured by a negotiable instrument,
- (b) a share in the capital of a corporation,
- (c) other moveable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any Court,

the attachment shall be made by a written order prohibiting,—

- (i) in the case of the debt, the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Court;
- (ii) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;

(iii) in the case of the other moveable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

(2) A copy of such order shall be affixed on some conspicuous part of the court-house, and another copy shall be sent, in the case of the debt, to the debtor, in the case of the share, to the proper officer of the corporation, and, in the case of the other moveable property (except as aforesaid), to the person in possession of the same.

(3) A debtor prohibited under clause (i) of sub-rule (1) may pay the amount of his debt into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

47 Where the property to be attached consists of the share or interest of the judgment-debtor in moveable property belonging to him and another as co-owners, the attachment shall be made by a notice to the judgment-debtor prohibiting him from transferring the share or interest or charging it in any way.

48. (1) Where the property to be attached is the salary or allowances of a public officer or of a servant of a railway company or local authority, the Court, whether the judgment-debtor or the disbursing officer is or is not within the local limits of the Court's jurisdiction, may order that the amount shall, subject to the provisions of section 60, be withheld from such salary or allowances either in one payment or by monthly instalments as the Court may direct; and, upon notice of the order to such officer as the Government may by notification in the Gazette of India or in the local official Gazette, as the case may be, appoint in this behalf, the officer or other person whose duty it is to disburse such salary or allowances shall withhold and remit to the Court the amount due under the order, or the monthly instalments, as the case may be.

(2) Where the attachable proportion of such salary or allowances is already being withheld and remitted to a Court in pursuance of a previous and unsatisfied order of attachment, the officer appointed by the Government in this behalf shall forthwith return the subsequent order to the Court issuing it with a full statement of all the particulars of the existing attachment.

(3) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (2), shall, without further notice or other process, bind the Government or the railway company or local authority, as the case may be, while the judgment-debtor is within the local limits to which this Code for the time being extends and while he is beyond those limits if he is in receipt of any salary or allowances payable out of His Majesty's Indian revenues or the funds of a railway company carrying on business in any part of British India or local authority in British India; and the Government or the railway company or local authority, as the case may be, shall be liable for any sum paid in contravention of this rule.

49. (1) Save as otherwise provided by this rule, property belonging to a partnership shall not be attached or sold in execution of a decree other than a decree passed against the firm or against the partners in the firm as such.

(2) The Court may, on the application of the holder of a decree against partner, make an order charging the interest of such partner in the partnership property and profits with payment of the amount due under the decree, and may, by the same or a subsequent order, appoint a receiver of the share of such partner in the profits (whether already declared or accruing) and of any other money which may be coming to him in respect of the partnership, and direct accounts and inquiries and make an order for the sale of such interest or other orders as might have been directed or made if a charge had been made in favour of the decree-holder by such partner, or as the circumstances of the case may require.

(3) The other partner or partners shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.

(4) Every application for an order under sub-rule (2) shall be served on the judgment-debtor and on his partners or such of them as are within British India.

(5) Every application made by any partner of the judgment-debtor under sub-rule (3) shall be served on the decree-holder and on the judgment-debtor, and on such of the other partners as do not join in the application and as are within British India.

(6) Service under sub-rule (4) or sub-rule (5) shall be deemed to be service on all the partners, and all orders made on such applications shall be similarly served.

Execution of decree against firm. 50. (1) Where a decree has been passed against a firm, execution may be granted—

- (a) against any property of the partnership;
- (b) against any person who has appeared in his own name under rule 9 or rule 7 of Order XXX. or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner;
- (c) against any person who has been individually served as a partner with a summons and has failed to appear;

Provided that nothing in this sub-rule shall be deemed to limit or otherwise affect the provisions of section 247 of the Indian Contract Act, 1872.*

(2) Where the decree-holder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to in sub-rule (1), clauses (b) and (c), as being a partner in the firm, he may apply to the Court which passed the decree for leave, and where the liability is not disputed, such Court may grant such leave, or, where such liability is disputed, may order that the liability of such person be tried and determined in any manner in which any issue in a suit may be tried and determined.

(3) Where the liability of any person has been tried and determined under sub-rule (2), the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

* Act IX. of 1872.

(4) Save as against any property of the partnership, a decree against a firm shall not release, render liable or otherwise affect any partner therein unless he has been served with a summons to appear and answer.

51. Where the property is a negotiable instrument not deposited in a Court, nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into Court and held subject to further orders of the Court.

52. Where the property to be attached is in the custody of any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon may be held subject to the further orders of the Court from which the notice is issued:

Provided that, where such property is in the custody of a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

53. (1) Where the property to be attached is a decree, either for the payment of money or for sale in enforcement of a mortgage or charge, the attachment shall be made,—

(a) if the decrees were passed by the same Court, then by order of such Court, and,

(b) if the decree sought to be attached was passed by another Court, then by the issue to such other Court of a notice by the Court which passed the decree sought to be executed requesting such other Court to stay the execution of its decree unless and until—

(i) the Court which passed the decree sought to be executed cancels the notice, or

(ii) the holder of the decree sought to be executed or his judgment-debtor applies to the Court receiving such notice to execute its own decree.

(2) Where a Court makes an order under clause (a) of sub-rule (1), or receives an application under sub-head (ii) of clause (b) of the said sub-rule, it shall on the application of the creditor who has attached the decree or his judgment-debtor, proceed to execute the attached decree and apply the net proceeds in satisfaction of the decree sought to be executed.

(3) The holder of a decree sought to be executed by the attachment of another decree of the nature specified in sub-rule (1) shall be deemed to be the representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

(4) Where the property to be attached in the execution of a decree is a decree other than a decree of the nature referred to in sub-rule (1), the attachment shall be made, by a notice by the Court which passed the

decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and, where such decree has been passed by any other Court, also by sending to such other Court a notice to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent.

(5) The holder of a decree attached under this rule shall give the Court executing the decree such information and aid as may reasonably be required.

(6) On the application of the holder of a decree sought to be executed by the attachment of another decree, the Court making an order of attachment under this rule shall give notice of such order to the judgment-debtor bound by the decree attached; and no payment or adjustment of the attached decree made by the judgment-debtor in contravention of such order after receipt of notice thereof, either through the Court or otherwise, shall be recognized by any Court so long as the attachment remains in force.

54. (1) Where the property is immoveable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge.

(2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the court-house, and also, where the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situate.

Removal of attachment after satisfaction of decree.

55. Where—

- (a) the amount decreed with costs and all charges and expenses resulting from the attachment of any property are paid into Court, or
- (b) satisfaction of the decree is otherwise made through the Court or certified to the Court, or
- (c) the decree is set aside or reversed,

the attachment shall be deemed to be withdrawn, and, in the case of immoveable property, the withdrawal shall, if the judgment-debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner prescribed by the last preceding rule.

56. Where the property attached is current coin or currency notes, the

Order for payment of coin or currency notes to party entitled under decree. Court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same.

57. Where any property has been attached in execution of a decree but by reason of the decree-holder's default the Court is unable to proceed further with the application for execution, it shall either dismiss the application or for any sufficient reason adjourn the proceedings to a future date. Upon the dismissal of such application the attachment shall cease.

Investigation of claims and objections.

58. (1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit :

Investigation of claims to, and objections to attachment of, attached property.

Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(2) Where the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection.

59. The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached.

60. Where upon the said investigation the Court is satisfied that for the reason stated in the claim or objection Release of property from attachment, such property was not, when attached, in the possession of the judgment-debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment-debtor at such time, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Court shall make an order releasing the property, wholly or to such extent as it thinks fit, from attachment.

61. Where the Court is satisfied that the property was, at the time it was attached, in the possession of the judgment-debtor as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Court shall disallow the claim.

62 Where the Court is satisfied that the property is subject to a mortgage or charge in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or charge.

Continuance of attachment subject to claim of incumbrancer.

63. Where a claim or an objection is preferred, the party against whom an order is made may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit, if any, the order shall be conclusive.

SALE GENERALLY.

64. Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

65. Save as otherwise prescribed, every sale in execution of a decree shall be conducted by an officer of the Court or by such other person as the Court may appoint in this behalf, and shall be made by public auction in manner prescribed.

66. (1) Where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court.

(2) Such proclamation shall be drawn up after notice to the decree-holder and the judgment-debtor and shall state the time and place of sale, and specify as fairly and accurately as possible—

(a) the property to be sold ;

(b) the revenue assessed upon the estate or part of the estate, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government ;

(c) any incumbrance to which the property is liable ;

(d) the amount for the recovery of which the sale is ordered ; and

(e) every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property.

(3) Every application for an order for sale under this rule shall be accompanied by a statement signed and verified in the manner hereinbefore prescribed for the signing and verification of pleadings and containing, so far as they are known to or can be ascertained by the person making the verification, the matters required by sub-rule (2) to be specified in the proclamation.

(4) For the purpose of ascertaining the matters to be specified in the proclamation, the Court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto.

67. (1) Every proclamation shall be made and published, as nearly as may be, in the manner prescribed by rule 54, sub-rule (2).
 Mode of making proclamation.

(2) Where the Court so directs, such proclamation shall also be published in the local official Gazette or in a local newspaper, or in both, and the cost of such publication shall be deemed to be costs of the sale.

(3) Where property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Court, otherwise be given.

68. Save in the case of property of the kind described in the proviso to rule 43, no sale hereunder shall, without the consent in writing of the judgment debtor, take place until after the expiration of at least thirty days in the case of immoveable property, and of at least fifteen days in the case of moveable property, calculated from the date on which the copy of the proclamation has been affixed on the court-house of the Judge ordering the sale.
 Time of sale.

69. (1) The Court may, in its discretion, adjourn any sale hereunder to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment:
 Adjournment or stoppage of sale.

Provided that, where the sale is made in, or within the precincts of, the court-house, no such adjournment shall be made without the leave of the Court.

(2) Where a sale is adjourned under sub-rule (1) for a longer period than seven days, a fresh proclamation under rule 67 shall be made, unless the judgment-debtor consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court which ordered the sale.

70. Nothing in rules 66 to 69 shall be deemed to apply to any case in which the execution of a decree has been transferred to the Collector.
 Saving of certain sales.

71. Any deficiency of price which may happen on a re-sale by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Court or to the Collector or subordinate of the Collector, as the case may be, by the officer or other person holding the sale, and shall, at the instance of either the decree-holder or the judgment-debtor, be recoverable from the defaulting purchaser under the provisions relating to the execution of a decree for the payment of money.
 Defaulting purchaser answerable for loss on re-sale.

72. (1) No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.
 Decree-holder not to bid for or buy property without permission.

(2) Where a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, subject to the provisions of section 73, be set off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

(3) Where a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor, or any other person whose interests are affected by the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale and all expenses attending it shall be paid by the decree holder.

73. No officer or other person having any duty to perform in connection with any sale shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold

Restriction on bidding or purchase by officers.

Sale of moveable property.

74. (1) Where the property to be sold is agricultural produce, the sale shall be held,—

Sale of agricultural produce.

(a) if such produce is a growing crop, on or near the land on which such crop has grown, or,

(b) if such produce has been cut or gathered, at or near the threshing-floor or place for treading out grain or the like or fodder-stack on or in which it is deposited:

Provided that the Court may direct the sale to be held at the nearest place of public resort, if it is of opinion that the produce is thereby likely to sell to greater advantage.

(2) Where, on the produce being put up for sale,—

(a) a fair price, in the estimation of the person holding the sale, is not offered for it, and

(b) the owner of the produce or a person authorized to act in his behalf applies to have the sale postponed till the next day or, if a market is held at the place of sale, the next market day,

the sale shall be postponed accordingly and shall be then completed, whatever price may be offered for the produce.

75. (1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed as to admit of its being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.

Special provisions relating to growing crops.

(2) Where the crop from its nature does not admit of being stored, it may be sold before it is cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of attending and cutting or gathering it.

76. Where the property to be sold is a negotiable instrument or a share in a corporation, the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker.

77. (1) Where moveable property is sold by public auction the price of each lot shall be paid at the time of sale or as soon after as the officer or other person holding the sale directs, and in default of payment the property shall forthwith be re sold.

(2) On payment of the purchase-money, the officer or other person holding the sale shall grant a receipt for the same, and the sale shall become absolute.

(3) Where the moveable property to be sold is a share in goods belonging to the judgment-debtor and a co-owner, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

73. No irregularity in publishing or conducting the sale of moveable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

79. (1) Where the property sold is moveable property of which actual seizure has been made, it shall be delivered to the purchaser.

(2) Where the property sold is moveable property in the possession of some person other than the judgment-debtor, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

(3) Where the property sold is a debt not secured by a negotiable instrument, or is a share in a corporation, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the corporation from permitting any such transfer or making any such payment to any person except the purchaser.

80. (1) Where the execution of a document or the endorsement of the party in whose name a negotiable instrument or a share in a corporation is standing is required to transfer such negotiable instrument or share, the Judge or such

officer as he may appoint in this behalf may execute such document or make such endorsement as may be necessary, and such execution or endorsement shall have the same effect as an execution or endorsement by the party,

(2) Such execution or endorsement may be in the following form, namely:—

A. B. by C. D., Judge of the Court of (or as the case may be), in a suit by E. F. against A. B.

(3) Until the transfer of such negotiable instrument or share, the Court may, by order, appoint some person to receive any interest or dividend due thereon and to sign a receipt for the same; and any receipt so signed shall be as valid and effectual for all purposes as if the same had been signed by the party himself.

81. In the case of any moveable property not hereinbefore provided for, the Court may make an order vesting such property in the purchaser or as he may direct; and such property shall vest accordingly.

Sale of immoveable property.

82. Sales of immoveable property in execution of decrees may be ordered by any Court other than a Court of Small Causes.

83. (1) Where an order for the sale of immoveable property has been made, if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immoveable property of the judgment-debtor the Court may, on his application, postpone the sale of the property comprised in the order for sale on such terms and for such period as it thinks proper, to enable him to raise the amount.

(2) In such case the Court shall grant a certificate to the judgment-debtor authorizing him within a period to be mentioned therein, and notwithstanding anything contained in section 64, to make the proposed mortgage, lease or sale:

Provided that all monies payable under such mortgage, lease or sale shall be paid, not to the judgment-debtor, but, save in so far as a decree-holder is entitled to set off such money under the provisions of rule 72, into Court:

Provided also that no mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Court.

(3) Nothing in this rule shall be deemed to apply to a sale of property directed to be sold in execution of a decree for sale in enforcement of a mortgage of, or charge on, such property.

84. (1) On every sale of immoveable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per cent. on the amount of his purchase-money to the officer or other person conducting the sale, and, in default of such deposit, the property shall forthwith be re sold.

(2) Where the decree-holder is the purchaser and is entitled to set off the purchase money under rule 72, the Court may dispense with the requirements of this rule.

85. The full amount of purchase-money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property :

Time for payment in full of purchase-money.

Provided that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under rule 72.

86. In default of payment within the period mentioned in the last preceding rule, the deposit may, if the Court thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

87. Every re-sale of immoveable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period hereinbefore prescribed for the sale.

88. Where the property sold is a share of undivided immoveable property and two or more persons, of whom one is a co-sharer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

89. (1) Where immoveable property has been sold in execution of a decree, any person, either owning such property or holding an interest therein by virtue of a title acquired before such sale, may apply to have the sale set aside on his depositing in Court,—

(a) for payment to the purchaser, a sum equal to five per cent. of the purchase-money, and

(b) for payment to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree holder.

(2) Where a person applies under rule 90 to set aside the sale of his immoveable property, he shall not, unless he withdraws his application, be entitled to make or prosecute an application under this rule.

(3) Nothing in this rule shall relieve the judgment-debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale.

90. (1) Where any immoveable property has been sold in execution of a decree, the decree-holder, or any person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it:

Provided that no sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

91. The purchaser at any such sale in execution of a decree may apply to the Court to set aside the sale, on the ground that the judgment-debtor had no saleable interest in the property sold.

92. (1) Where no application is made under rule 89, rule 90 or rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall become absolute.

(2) Where such application is made and allowed, and where, in the case of an application under rule 89, the deposit required by that rule is made within thirty days from the date of sale, the Court shall make an order setting aside the sale:

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.

(3) No suit to set aside an order made under this rule shall be brought by any person against whom such order is made.

93. Where a sale of immoveable property is set aside under rule 92, the purchaser shall be entitled to an order for repayment of his purchase-money, with or without interest as the Court may direct, against any person to whom it has been paid.

94. Where a sale of immoveable property has become absolute, the Court shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear date the day on which the sale became absolute.

95. Where the immoveable property sold is in the occupancy of the judgment-debtor or of some person on his behalf or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by putting such purchaser, or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

96. Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser.

Resistance to delivery of possession to decree-holder or purchaser.

97. (1) Where the holder of a decree for the possession of immoveable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

98. Where the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation, to be detained in the civil prison for a term which may extend to thirty days.

99. Where the Court is satisfied that the resistance or obstruction was occasioned by any person (other than the judgment-debtor) claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the Court shall make an order dismissing the application.

100. (1) Where any person other than the judgment-debtor is dispossessed of immoveable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

101. Where the Court is satisfied that the applicant was in possession of the property on his own account or on account of some person other than the judgment-debtor, it shall direct that the applicant be put into possession of the property.

102. Nothing in rules 99 and 101 shall apply to resistance or obstruction in execution of a decree for the possession of immoveable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

103. Any party not being a judgment-debtor against whom an order is made under rule 98, rule 99 or rule 101 may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit, if any, the order shall be conclusive.

ORDER XXII.

DEATH, MARRIAGE AND INSOLVENCY OF PARTIES.

1. The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

2. Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

3. (1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

4. (1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

5. Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court.

Determination of question as to legal representative.

6. Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place.

No abatement by reason of death after hearing.

7. (1) The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may notwithstanding be proceeded with to judgment, and, where the decree is against a female defendant, it may be executed against her alone.

Suit not abated by marriage of female party.

(2) Where the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and, in case of judgment for the wife, execution of the decree may, with such permission, be issued upon the application of the husband, where the husband is by law entitled to the subject matter of the decree.

8. (1) The insolvency of a plaintiff in any suit which the assignee or receiver might maintain for the benefit of his creditors, shall not cause the suit to abate, unless such assignee or receiver declines to continue the suit or (unless for any special reason the Court otherwise directs) to give security for the costs thereof within such time as the Court may direct.

When plaintiff's insolvency bars suit.

(2) Where the assignee or receiver neglects or refuses to continue the suit and to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's insolvency, and the Court may make an order dismissing the suit and awarding to the defendant the costs which he has incurred in defending the same to be proved as a debt against the plaintiff's estate.

Procedure where assignee fails to continue suit or give security.

9. (1) Where a suit abates or is dismissed under this Order no fresh suit shall be brought on the same cause of action.

Effect of abatement or dismissal.

(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

(3) The provisions of section 5 of the Indian Limitation Act, 1877,* shall apply to applications under sub-rule (2)

10. (1) In other cases of an assignment, creation or devolution of Procedure in case of assignment before final order in suit. any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1).

11. In the application of this Order to appeals. so far as may be, the word "plaintiff" shall be held to include an appellant, the word "defendant" a respondent, and the word "suit" an appeal.

Application of Order to proceedings.

12. Nothing in rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order.

ORDER XXIII.

WITHDRAWAL AND ADJUSTMENT OF SUITS.

1. (1) At any time after the institution of a suit the plaintiff may Withdrawal of suit or abandonment of part of claim. as against all or any of the defendants. withdraw his suit or abandon part of his claim.

(2) Where the Court is satisfied—

(a) that a suit must fail by reason of some formal defect, or

(b) that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or abandon such part of a claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of a claim.

(3) Where the plaintiff withdraws from a suit, or abandons part of a claim, without the permission referred to in sub rule (2), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(4) Nothing in this rule shall be deemed to authorize the Court to permit one of several plaintiffs to withdraw without the consent of the others.

2. In any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.

3. Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded and shall pass a decree in accordance therewith so far as it relates to the suit.

Proceedings in execution of decrees not affected.

4. Nothing in this Order shall apply to any proceedings in execution of a decree or order.

ORDER XXIV.

PAYMENT INTO COURT.

1. The defendant in any suit to recover a debt or damages may, at any stage of the suit, deposit in Court such sum of money as he considers a satisfaction in full of the claim.

2. Notice of the deposit shall be given through the Court by the defendant to the plaintiff, and the amount of the deposit, shall (unless the Court otherwise directs) be paid to the plaintiff on his application.

3. No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited is in full of the claim or falls short thereof.

4. (1) Where the plaintiff accepts such amount as satisfaction in part only of his claim, he may prosecute his suit for the balance; and, if the Court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff shall pay the costs of the suit incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim.

(2) Where the plaintiff accepts such amount as satisfaction in full of his claim, he shall present to the Court a statement to that effect, and such statement shall be filed and the Court shall pronounce judgment accordingly; and, in directing by whom the costs of each party are to be paid, the Court shall consider which of the parties is most to blame for the litigation.

Illustrations.

(a) A owes B Rs. 100. B sues A for the amount, having made no demand for payment and having no reason to believe that the delay caused

by making a demand would place him at a disadvantage. On the plaint being filed, A pays the money into Court. B accepts it in full satisfaction of his claim, but the Court should not allow him any costs, the litigation being presumably groundless on his part.

(b) B sues A under the circumstances mentioned in illustration (a). On the plaint being filed, A disputes the claim. Afterwards A pays the money into Court. B accepts it in full satisfaction of his claim. The Court should also give B his costs of suit, A's conduct having shown that the litigation was necessary.

(c) A owes B Rs. 100, and is willing to pay him that sum without suit. B claims Rs. 150 and sues A for that amount. On the plaint being filed, A pays Rs. 100 into Court and disputes only his liability to pay the remaining Rs. 50. B accepts the Rs. 100 in full satisfaction of his claim. The Court should order him to pay A's costs.

ORDER XXV.

SECURITY FOR COSTS.

1. (1) Where, at any stage of a suit, it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are, residing out of British India, and that such plaintiff does not, or that no one of such plaintiffs does possess any sufficient immoveable property within British India other than the property in suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff or plaintiffs, within a time fixed by it, to give security for the payment of all costs incurred and likely to be incurred by any defendant.

(2) Whoever leaves British India under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of British India within the meaning of sub-rule (1).

(3) On the application of any defendant in a suit for the payment of money, in which the plaintiff is a woman, the Court may at any stage of the suit make a like order if it is satisfied that such plaintiff does not possess any sufficient immoveable property within British India.

2. (1) In the event of such security not being furnished within the time fixed, the Court shall make an order dismissing the suit unless the plaintiff or plaintiffs are permitted to withdraw therefrom.

(2) Where a suit is dismissed under this rule, the plaintiff may apply for an order to set the dismissal aside, and, if it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from furnishing the security within the time allowed, the Court shall set aside the dismissal upon such terms as to security, costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(3) The dismissal shall not be set aside unless notice of such application has been served on the defendant.

ORDER XXVI.

COMMISSIONS.

Commissions to examine witnesses.

1. Any Court may in any suit issue a commission for the examination on interrogatories or otherwise of any person
Cases in which Court may issue commission to examine witness.
 resident within the local limits of its jurisdiction who is exempted under this Code from attending the Court or who is from sickness or infirmity unable to attend it.

2. An order for the issue of a commission for the examination of a witness may be made by the Court either of its own motion or on the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be examined.
Order for commission.

3. A commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any person whom the Court thinks fit to execute.
Where witness resides within Court's jurisdiction.

4. (1) Any Court may in any suit issue a commission for the examination of—
Persons for whose examination commission may issue.

(a) any person resident beyond the local limits of its jurisdiction ;

(b) any person who is about to leave such limits before the date on which he is required to be examined in Court ; and

(c) any civil or military officer of the Government who cannot, in the opinion of the Court, attend without detriment to the public service.

(2) Such commission may be issued to any Court, not being a High Court, within the local limits of whose jurisdiction such person resides, or to any pleader or other person whom the Court issuing the commission may appoint.

(3) The Court on issuing any commission under this rule shall direct whether the commission shall be returned to itself or to any subordinate Court.

5. Where any Court to which application is made for the issue of a commission for the examination of a person residing at any place not within British India is satisfied that the evidence of such person is necessary, the Court may issue such commission or a letter of request.
Commission or Request to examine witness not within British India.

6. Every Court receiving a commission for the examination of any person shall examine him or cause him to be examined pursuant thereto.
Court to examine witness pursuant to commission.

7. Where a commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the return thereto and the evidence taken under it shall (subject to the provisions of the next following rule) form part of the record of the suit.

8. Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered, unless—

(a) the person who gave the evidence is beyond the jurisdiction of the Court, or dead or unable from sickness or infirmity to attend to be personally examined, or exempted, from personal appearance in Court, or is a civil or military officer of the Government who cannot, in the opinion of the Court, attend without detriment to the public service, or

(b) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in clause (a), and authorizes the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

Commissions for local investigations.

9. In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne-profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:

Provided that, where the Local Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

10. (1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him, to the Court.

(2) The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit, may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

(3) Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.

Commissions to examine accounts.

11. In any suit in which an examination or adjustment of accounts is necessary, the Court may issue a commission to such person as it thinks fit directing him to make such examination or adjustment.

Commission to examine or adjust accounts.

12. (1) The Court shall furnish the Commissioner with such part of the proceedings and such instructions as appear necessary, and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination.

Court to give Commissioner necessary instructions.

(2) The proceedings and report (if any) of the Commissioner shall be evidence in the suit, but where the Court has reason to be dissatisfied with them, it may direct such further inquiry as it shall think fit.

Proceedings and report to be evidence, Court may direct further inquiry.

Commissions to make partitions.

13. Where a preliminary decree for partition has been passed, the Court may, in any case not provided for by section 54, issue a commission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree.

Commission to make partition of immoveable property.

14. (1) The Commissioner shall after such inquiry as may be necessary, divide the property into as many shares as may be directed by the order under which the commission was issued, and shall allot such shares to the parties, and may, if authorized thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

Procedure of Commissioner.

(2) The Commissioner shall then prepare and sign a report or the Commissioners (where the commission was issued to more than one person and they cannot agree) shall prepare and sign separate reports appointing the share of each party and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court; and the Court, after hearing any objections which the parties may make to the report or reports, shall confirm, vary or set aside the same.

(3) Where the Court confirms or varies the report or reports it shall pass a decree in accordance with the same as confirmed or varied; but where the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit.

General provisions.

15. Before issuing any commission under this Order, the Court may order such sum (if any) as it thinks reasonable for the expenses of the commission to be, within a time to be fixed, paid into Court by the party at whose instance or for whose benefit the commission is issued.

Expenses of commission to be paid into Court.

16. Any Commissioner appointed under this Order may, unless otherwise directed by the order of appointment,—

Powers of Commissioners.

(a) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him ;

(b) call for and examine documents and other things relevant to the subject of inquiry ;

(c) at any reasonable time enter upon or into any land or building mentioned in the order.

17. (1) The provisions of this Code relating to the summoning, attendance and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this Order whether the commission in execution of which they are so required has been issued by a Court situate within or by a Court situate beyond the limits of British India, and for the purposes of this rule the Commissioner shall be deemed to be a Civil Court.

Attendance and examination of witnesses before Commissioner.

(2) A Commissioner may apply to any Court (not being a High Court) within the local limits of whose jurisdiction a witness resides for the issue of any process which he may find it necessary to issue to or against such witness, and such Court may, in its discretion, issue such process as it considers reasonable and proper.

18. (1) Where a commission is issued under this Order, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders.

Parties to appear before Commissioner.

(2) Where all or any of the parties do not so appear, the Commissioner may proceed in their absence.

ORDER XXVII.

SUITS BY OR AGAINST THE GOVERNMENT OR PUBLIC OFFICERS IN THEIR OFFICIAL CAPACITY.

1. In any suit by or against the Secretary of State for India in Council, the plaint or written statement shall be signed by such person as the Government may, by general or special order, appoint in this be-

Suits by or against Government.

half, and shall be verified by any person whom the Government may appoint and who is acquainted with the facts of the case.

2. Persons being *ex officio* or otherwise authorized to act for the Government in respect of any judicial proceeding shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of the Government.

3. In suits by or against the Secretary of State for India in Council, instead of inserting in the plaint the name and description and place of residence of the plaintiff or defendant, it shall be sufficient to insert the words "The Secretary of State for India in Council."

4. The Government pleader in any Court, or such other person as the Local Government may for any Court appoint in this behalf, shall be the agent of the Government for the purpose of receiving processes against the Secretary of State for India in Council issued by such Court.

5. The Court, in fixing the day for the Secretary of State for India in Council to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channel, and for the issue of instructions to the Government pleader to appear and answer on behalf of the said Secretary of State for India in Council or the Government, and may extend the time at its discretion.

6. The Court may also, in any case in which the Government pleader is not accompanied by any person on the part of the Secretary of State for India in Council, who may be able to answer any material questions relating to the suit, direct the attendance of such a person.

7. (1) Where the defendant is a public officer and, on receiving the summons, considers it proper to make a reference to the Government before answering the plaint, he may apply to the Court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel.

(2) Upon such application the Court shall extend the time for so long as appears to it to be necessary.

8. (1) Where the Government undertakes the defence of a suit against a public officer, the Government pleader, upon being furnished with authority to appear and answer the plaint, shall apply to the Court, and upon such application the Court shall cause a note of his authority to be entered in the register of civil suits.

(2) Where no application under sub-rule (1) is made by the Government pleader on or before the day fixed in the notice for the defendant to appear and answer, the case shall proceed as in a suit between private parties :

Provided that the defendant shall not be liable to arrest, nor his property to attachment, otherwise than in execution of a decree.

ORDER XXVIII.

SUITS BY OR AGAINST MILITARY MEN.

1. (1) Where any officer or soldier actually serving the Government in a military capacity is a party to a suit, and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorize any person to sue or defend in his stead.

Officers or soldiers who cannot obtain leave may authorize any person to sue or defend for them.

(2) The authority shall be in writing and shall be signed by the officer or soldier in the presence of (a) his commanding officer, or the next subordinate officer, if the party is himself the commanding officer, or (b) where the officer or soldier is serving in military staff employment, the head or other superior officer of the office in which he is employed. Such commanding or other officer shall countersign the authority, which shall be filed in Court.

(3) When so filed the countersignature shall be sufficient proof that the authority was duly executed, and that the officer or soldier by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the suit in person.

Explanation.—In this Order the expression “commanding officer” means the officer in actual command for the time being of any regiment, corps, detachment or dépôt to which the officer or soldier belongs.

2. Any person authorized by an officer or a soldier to prosecute or defend a suit in his stead may prosecute or defend it in person in the same manner as the officer or soldier could do if present; or he may appoint a pleader to prosecute or defend the suit on behalf of such officer or soldier.

Person so authorized may act personally or appoint pleader.

3. Processes served upon any person authorized by an officer or a soldier under rule 1 or upon any pleader appointed as aforesaid by such person shall be as effectual as if they had been served on the party in person.

Service on person so authorized, or on his pleader, to be good service.

ORDER XXIX.

SUITS BY OR AGAINST CORPORATIONS.

1. In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.

Subscription and verification of pleading.

2. Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served—
 Service on corporation.

(a) on the secretary, or on any director, or other principal officer of the corporation, or

(b) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business

3. The Court may, at any stage of the suit, require the personal appearance of the secretary or of any director, or other principal officer of the corporation who may be able to answer material questions relating to the suit.
 Power to require personal attendance of officer of corporation.

ORDER XXX.

SUITS BY OR AGAINST FIRMS AND PERSONS CARRYING ON BUSINESS IN NAMES OTHER THAN THEIR OWN.

1. (1) Any two or more persons claiming or being liable as partners and carrying on business in British India may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the Court may direct
 Suing of partners in name of firm.

(2) Where persons sue or are sued as partners in the name of their firm under sub-rule (1), it shall in the case of any pleading or other document required by or under this Code to be signed verified or certified by the plaintiff or the defendant, suffice if such pleading or other document is signed, verified or certified by any one of such persons.

2. (1) Where a suit is instituted by partners in the name of their firm, the plaintiffs or their pleader shall, on demand in writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted.
 Disclosure of partners' names.

(2) Where the plaintiffs or their pleader fail to comply with any demand made under sub-rule (1), all proceedings in the suit may, upon an application for that purpose, be stayed upon such terms as the Court may direct.

(3) Where the names of the partners are declared in the manner referred to in sub-rule (1), the suit shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as plaintiffs in the plaint :

Provided that all the proceedings shall nevertheless continue in the name of the firm.

Service.

3. Where persons are sued as partners in the name of their firm, the summons shall be served either—

(a) upon any one or more of the partners, or

(b) at the principal place at which the partnership business is carried on within British India upon any person having, at the time of service, the control or management of the partnership business there,

as the Court may direct; and such service shall be deemed good service upon the firm so sued, whether all or any of the partners are within or without British India:

Provided that, in the case of a partnership which has been dissolved to the knowledge of the plaintiff before the institution of the suit, the summons shall be served upon every person within British India whom it is sought to make liable.

4. (1) Notwithstanding anything contained in section 45 of the Indian Contract Act,* 1872, where two or more persons may sue or be sued in the name of a firm under the foregoing provisions and any of such persons dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit.

(2) Nothing in sub-rule (1) shall limit or otherwise affect, any right which the legal representative of the deceased may have—

(a) to apply to be made a party to the suit, or

(b) to enforce any claim against the survivor or survivors.

5. Where a summons is issued to a firm and is served in the manner provided by rule 3, every person upon whom it is served shall be informed by notice in writing given at the time of such service, whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters, and, in default of such notice, the person served shall be deemed to be served as a partner.

6. Where persons are sued as partners in the name of their firm, they shall appear individually in their own names, but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

7. Where a summons is served in the manner provided by rule 3 upon a person having the control or management of the partnership business, no appearance by him shall be necessary unless he is a partner of the firm sued.

8. Any person served with summons as a partner under rule 3 may appear under protest, denying that he is a partner, but such appearance shall not pre-

Appearance under protest,

clude the plaintiff from otherwise serving a summons on the firm and obtaining a decree against the firm in default of appearance where no partner has appeared.

9. This Order shall apply to suits between a firm and one or more of the partners therein and to suits between firms having one or more partners in common; but no execution shall be issued in such suits except by leave of the Court, and, on an application for leave to issue such execution, all such accounts and inquiries may be directed to be taken and made and directions given as may be just.

10. Any person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm name; and, so far as the nature of the case will permit, all rules under this Order shall apply.

ORDER XXXI.

SUITS BY OR AGAINST TRUSTEES, EXECUTORS AND ADMINISTRATORS.

1. In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made parties.

2. Where there are several trustees, executors or administrators, they shall all be made parties to a suit against one or more of them:

Provided that the executors who have not proved their testator's will, and trustees, executors and administrators outside British India, need not be made parties.

3. Unless the Court directs otherwise, the husband of a married trustee, administratrix or executrix shall not as such be a party to a suit by or against her.

ORDER XXXII.

SUITS BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND.

1. Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor.

2. (1) Where a suit is instituted by or on behalf of a minor without a next friend, the defendant may apply to

Where suit is instituted without next friend, plaint to be taken off the file.

have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented.

(2) Notice of such application shall be given to such person, and the Court, after hearing his objections (if any), may make such order in the matter as it thinks fit.

3. (1) Where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor.

Guardian for the suit to be appointed by Court for minor defendant.

(2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed.

(4) No order shall be made on any application under this rule except upon notice to the minor and to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian, upon notice to the father or other natural guardian of the minor or, where there is no father or other natural guardian, to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule.

Who may act as next friend or be appointed guardian for the suit.

4 (1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit

Provided that the interest of such person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant, or, in the case of a guardian for the suit, a plaintiff.

(2) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or be appointed his guardian for the suit unless the Court considers, for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act or be appointed, as the case may be.

(3) No person shall without his consent be appointed guardian for the suit.

(4) Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian, and may direct that the costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interested, and may give directions for the repayment or allowance of such costs as justice and the circumstances of the case may require.

Representation of minor by next friend or guardian for the suit.

5. (1) Every application to the Court on behalf of a minor, other than an application under rule 10, sub-rule (2), shall be made by his next friend or by his guardian for the suit.

(1) Every order made in a suit or on any application, before the Court in or by which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit, as the case may be, may be discharged, and, where the pleader of the party at whose instance such order was obtained knew, or might reasonably have known, the fact of such minority, with costs to be paid by such pleader.

Receipt by next friend or guardian for the suit of property under decree for minor.

6. (1) A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other moveable property on behalf of a minor either—

(a) by way of compromise before decree or order, or

(b) under a decree or order in favour of the minor.

(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability known to the Court to receive the money or other moveable property, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application.

7. (1) No next friend or guardian for the suit shall, without the leave of the Court, expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian.

Agreement or compromise by next friend or guardian for the suit.

(2) Any such agreement or compromise entered into without the leave of the Court so recorded shall be voidable against all parties other than the minor.

8. (1) Unless otherwise ordered by the Court, a next friend shall not retire without first procuring a fit person to be put in his place and giving security for the costs already incurred.

Retirement of next friend.

(2) The application for the appointment of a new next friend shall be supported by an affidavit showing the fitness of the person proposed, and also that he has no interest adverse to that of the minor

9. (1) Where the interest of the next friend of a minor is adverse to that of the minor or where he is so connected with a defendant whose interest is adverse to that of the minor as to make it unlikely that the minor's interest will be properly protected by him, or where he does not do his duty, or, during the pendency of the suit, ceases to reside within British India, or for any other sufficient cause, application may be made on behalf of the minor or by a defendant for his removal; and the Court, if satisfied of the sufficiency of the cause assigned, may order the next friend to be removed accordingly, and make such other order as to costs as it thinks fit.

Removal of next friend.

(2) Where the next friend is not a guardian appointed or declared by an authority competent in this behalf, and an application is made by a guardian so appointed or declared, who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor, and shall thereupon appoint the applicant to be next friend in his place upon such terms as to the costs already incurred in the suit as it thinks fit

Stay of proceedings on removal, etc., of next friend.

10. (1) On the retirement, removal or death of the next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his place

(2) Where the pleader of such minor omits, within a reasonable time, to take steps to get a new next friend appointed, any person interested in the minor or in the matter in issue may apply to the Court for the appointment of one, and the Court may appoint such person as it thinks fit.

11. (1) Where the guardian for the suit desires to retire or does not do his duty, or where other sufficient ground is made to appear, the Court may permit such guardian to retire or may remove him, and may make such order as to costs as it thinks fit.

(2) Where the guardian for the suit retires, dies or is removed by the Court during the pendency of the suit, the Court shall appoint a new guardian in his place.

12. (1) A minor plaintiff or a minor not a party to a suit on whose behalf an application is pending shall on attaining majority, elect whether he will proceed with the suit or application.

(2) Where he elects to proceed with the suit or application, he shall apply for an order discharging the next friend and for leave to proceed in his own name.

(3) The title of the suit or application shall in such case be corrected so as to read thenceforth thus :—

"A. B., late a minor, by C. D., his next friend, but now having attained majority."

(4) Where he elects to abandon the suit or application, he shall, if a sole plaintiff or sole applicant, apply for an order to dismiss the suit or application on repayment of the costs incurred by the defendant or opposite party or which may have been paid by his next friend.

(5) Any application under this rule may be made *ex parte*: but no order discharging a next friend and permitting a minor plaintiff to proceed in his own name shall be made without notice to the next friend.

13. (1) Where a minor co-plaintiff on attaining majority desires to repudiate the suit, he shall apply to have his name struck out as co-plaintiff; and the Court, if it finds that he is not a necessary

Where minor co-plaintiff attaining majority desires to repudiate suit—

party, shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit.

(2) Notice of the application shall be served on the next friend, on any co-plaintiff and on the defendant.

(3) The costs of all parties of such application, and of all or any proceedings theretofore had in the suit, shall be paid by such persons as the Court directs.

(4) Where the applicant is a necessary party to the suit, the Court may direct him to be made a defendant.

14. (1) A minor on attaining majority may, if a sole plaintiff, apply that a suit instituted in his name by a next friend be dismissed on the ground that it was unreasonable or improper.

(2) Notice of the application shall be served on all the parties concerned; and the Court, upon being satisfied of such unreasonableness or impropriety, may grant the application and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit, or make such other order as it thinks fit.

15. The provisions contained in rules 1 to 14, so far as they are applicable, shall extend to persons adjudged to be of unsound mind and to persons who though not so adjudged are found by the Court on inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interests when suing or being sued.

16 Nothing in this Order shall apply to a Sovereign Prince or Ruling Chief suing or being sued in the name of his State, or being sued by direction of the Governor-General in Council or a Local Government in the name of an agent or in any other name, or shall be construed to affect or in any way derogate from the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind.

ORDER XXXIII.

SUITS BY PAUPERS.

Suits may be instituted *in forma pauperis*.

I. Subject to the following provisions, any suit may be instituted by a pauper.

Explanation.—A person is a "pauper" when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or, where no such fee is prescribed, when he is not entitled to property worth one hundred rupees other than his necessary wearing-apparel and the subject-matter of the suit.

2. Every application for permission to sue as a pauper shall contain the particulars required in regard to plaints in suits; a schedule of any moveable or im-

moveable property belonging to the applicant, with the estimated value thereof, shall be annexed thereto; and it shall be signed and verified in the manner prescribed for the signing and verification of pleadings.

3. Notwithstanding anything contained in these rules, the application

Presentation of application. shall be presented to the Court by the applicant in person, unless he is exempted from appearing in Court, in which case the application may be presented by an authorized agent who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person.

4. (1) Where the application is in proper form and duly presented,

Examination of applicant. the Court may, if it thinks fit examine the applicant, or his agent when the applicant is allowed to appear by agent, regarding the merits of the claim and the property of the applicant.

(2) Where the application is presented by an agent, the Court may, if

if presented by agent, Court it thinks fit, order that the applicant be examined by a commission in the manner in which the examination of an absent witness may be taken.

5. The Court shall reject an application
Rejection of application. for permission to sue as a pauper—

(a) where it is not framed and presented in the manner prescribed by rules 2 and 3, or

(b) where the applicant is not a pauper, or

(c) where he has, within two months next before the presentation of the application, disposed of any property fraudulently or in order to be able to apply for permission to sue as a pauper, or

(d) where his allegations do not show a cause of action, or

(e) where he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter.

6. Where the Court sees no reason to reject the application on any

Notice of day for receiving of the grounds stated in rule 5, it shall fix a day (of which at least ten days' clear notice shall be given to the opposite party and the Government pleader) for receiving such evidence as the applicant may adduce in proof of his pauperism, and for hearing any evidence which may be adduced in disproof thereof.

7. (1) On the day so fixed or as soon thereafter as may be convenient,

Procedure at hearing. the Court shall examine the witnesses (if any) produced by either party, and may examine the applicant or his agent, and shall make a memorandum of the substance of their evidence.

(2) The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court as herein provided, the applicant is or is not subject to any of the prohibitions specified in rule 5.

(3) The Court shall then either allow or refuse to allow the applicant to sue as a pauper.

8. Where the application is granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted in the ordinary manner, except that the plaintiff shall not be liable to pay any court-fee (other than fees payable for service of process) in respect of any petition, appointment of a pleader or other proceeding connected with the suit.

9. The Court may, on the application of the defendant, or of the Government pleader, of which seven days' clear notice in writing has been given to the plaintiff, order the plaintiff to be dispaupered—

- (a) if he is guilty of vexatious or improper conduct in the course of the suit,
- (b) if it appears that his means are such that he ought not to continue to sue as a pauper, or
- (c) if he has entered into any agreement with reference to the subject-matter of the suit, under which any other person has obtained an interest in such subject-matter.

10. Where the plaintiff succeeds in the suit, the Court shall calculate the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper; such amount shall be recoverable by the Government from any party ordered by the decree to pay the same, and shall be a first charge on the subject-matter of the suit.

11. Where the plaintiff fails in the suit or is dispaupered, or where the suit is withdrawn or dismissed,—

- (a) because the summons for the defendant to appear and answer has not been served upon him in consequence of the failure of the plaintiff to pay the court-fee or postal charges (if any) chargeable for such service, or
- (b) because the plaintiff does not appear when the suit is called on for hearing,

the Court shall order the plaintiff, or any person added as a co-plaintiff to the suit, to pay the court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper.

12. The Government shall have the right at any time to apply to the Court to make an order for the payment of court-fees under rule 10 or rule 11.

13. All matters arising between the Government and any party to the suit under rule 10, rule 11 or rule 12 shall be deemed to be questions arising between the parties to the suit within the meaning of section 47.

14. Where an order is made under rule 10, rule 11 or rule 12. the Court shall forthwith cause a copy of the decree to be forwarded to the Collector.

15. An order refusing to allow the applicant to sue as a pauper shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue, but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right, provided that he first pays the costs (if any) incurred by the Government and by the opposite party in opposing his application for leave to sue as a pauper.

16. The costs of an application for permission to sue as a pauper and of an inquiry into pauperism shall be costs in the suit.

ORDER XXXIV.

SUITS RELATING TO MORTGAGES OF IMMOVABLE PROPERTY.

1. Subject to the provisions of this Code, all persons having an interest either in the mortgage-security or in the right of redemption shall be joined as parties to any suit relating to the mortgage.

Explanation.—A puisne mortgagee may sue for foreclosure or for sale without making the prior mortgagee a party to the suit and a prior mortgagee need not be joined in a suit to redeem a subsequent mortgage.

Preliminary decree in foreclosure-suit.

2. In a suit for foreclosure, if the plaintiff succeeds, the Court shall pass a decree—

(a) ordering that an account be taken of what will be due to the plaintiff for principal and interest on the mortgage and for his costs of the suit (if any) awarded to him on the day next hereinafter, referred to, or

(b) declaring the amount so due at the date of such decree, and directing—

(c) that if the defendant pays into Court the amount so due on a day within six months from the date of declaring in Court the amount so due to be fixed by the Court, the plaintiff shall deliver up to the defendant, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, re-transfer the property to the defendant free from the mortgage and from all incumbrances created by the plaintiff or any person

claiming under him, or, where the plaintiff claims by derived title, by those under whom he claims, and shall also, if necessary, put the defendant in possession of the property, but

- (d) that, if such payment is not made on or before the day to be fixed by the Court, the defendant shall be debarred from all right to redeem the property.

3. (1) Where, on or before the day fixed, the defendant pays into Court the amount declared due as aforesaid, together with such subsequent costs as are mentioned in rule 10, the Court shall pass a decree—

Final decree in foreclosure-suit.

(a) ordering the plaintiff to deliver up the documents which under the terms of the preliminary decree he is bound to deliver up, and, if so required,

(b) ordering him to re-transfer the mortgaged property as directed in the said decree,

and also, if necessary,

(c) ordering him to put the defendant in possession of the property—

(2) Where such payment is not so made, the Court shall, on application made in that behalf by the plaintiff, pass a decree that the defendant and all persons claiming through or under him be debarred from all right to redeem the mortgaged property and also, if necessary, ordering the defendant to put the plaintiff in possession of the property.

Provided that the Court may, upon good cause shown and upon such terms (if any) as it thinks fit, from time to time postpone the day fixed for such payment.

Power to enlarge time.

Discharge of debt.

(3) On the passing of a decree under sub-rule (2) the debt secured by the mortgage shall be deemed to be discharged.

4. (1) In a suit for sale, if the plaintiff succeeds, the Court shall pass a decree to the effect mentioned in clauses (a), (b) and (c) of rule 2 and also directing that, in default of the defendant paying as therein

mentioned, the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is declared due to the plaintiff as aforesaid, together with subsequent interest and subsequent costs, and that the balance (if any) be paid to the defendant or other persons entitled to receive the same.

(2) In a suit for foreclosure, if the plaintiff succeeds and the mortgage is not a mortgage by conditional sale, the Court may, at the instance of the plaintiff or of any person interested either in the mortgage-money or in the right of redemption pass a like decree (in lieu of a decree for foreclosure) on such terms as it thinks fit including the deposit in Court of a reasonable sum, fixed by the Court, to meet the expenses of sale and to secure the performance of the terms.

Power to decree sale in foreclosure-suit.

5. (1) Where on or before the day fixed the defendant pays into Court the amount declared due as aforesaid, together with such subsequent costs as are mentioned in rule 10, the Court shall pass a decree—

- (a) ordering the plaintiff to deliver up the documents which under the terms of the preliminary decree he is bound to deliver up,

and, if so required,

- (b) ordering him to re-transfer the mortgaged property as directed in the said decree,

and also, if necessary,

- (c) ordering him to put the defendant in possession of the property.

(2) Where such payment is not so made, the Court shall, on application made in that behalf by the plaintiff, pass a decree that the mortgaged property, or a sufficient part thereof, be sold and that the proceeds of the sale be dealt with as is mentioned in rule 4.

6. Where the net proceeds of any such sale are found to be insufficient to pay the amount due to the plaintiff, if the balance is legally recoverable from the defendant otherwise than out of the property sold, the Court may pass a decree for such amount.

7. In a suit for redemption, if the plaintiff succeeds, the Court shall pass a decree—

- (a) ordering that an account be taken of what will be due to the defendant for principal and interest on the mortgage and for his costs of the suit (if any) awarded to him on the day next hereinafter referred to, or

(b) declaring the amount so due at the date of such decree, and directing—

- (c) that, if the plaintiff pays into Court the amount so due on a day within six months from the date of declaring in Court the amount so due, to be fixed by the Court, the defendant shall deliver up to the plaintiff, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, re-transfer the property to the plaintiff free from the mortgage and from all incumbrances created by the defendant or any person claiming under him, or, where the defendant claims by derived title, by those under whom he claims, and shall, if necessary, put the plaintiff in possession of the property, but

- (d) that, if such payment is not made on or before the day to be fixed by the Court, the plaintiff shall (unless the mortgage is simple or usufructuary) be debarred from all right to redeem or (unless the mortgage is by conditional sale) that the mortgaged property be sold.

8. (1) Where, on or before the day fixed, the plaintiff pays into Court the amount declared due as aforesaid, together with such subsequent costs as are mentioned in rule 10, the Court shall pass a decree—

(a) ordering the defendant to deliver up the documents which under the terms of the preliminary decree he is bound to deliver up, and, if so required,

(b) ordering him to re-transfer the mortgaged property as directed in the said decree,

and, also, if necessary,

(c) ordering him to put the plaintiff in possession of the property.

(2) Where such payment is not so made, and the mortgage is not simple or usufructuary, the Court shall, on application made in that behalf by the defendant, pass a decree that the plaintiff and all persons claiming through or under him be debarred from all right to redeem the mortgaged property and also, if necessary, ordering the plaintiff to put the defendant in possession of the property.

(3) On the passing of a decree under sub-rule (2) the debt secured by the mortgage shall be deemed to be discharged.

(4) Where such payment is not so made, and the mortgage is not by conditional sale, the Court shall, on application made in that behalf by the defendant, pass a decree that the mortgaged property or a sufficient part thereof be sold and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is found due to the defendant, and that the balance (if any) be paid to the plaintiff or other persons entitled to receive the same:

Provided that the Court may, upon good cause shown and upon such terms (if any) as it thinks fit, from time to time postpone the day fixed for payment.

9. Notwithstanding any thing hereinbefore contained, if it appears, upon taking the account referred to in rule 7, that nothing is due to the defendant or that he has been overpaid, the Court shall pass a decree directing the defendant, if so required, to re-transfer the property and to pay to the plaintiff the amount which may be found due to him; and the plaintiff shall, if necessary, be put in possession of the mortgaged property.

10. In finally adjusting the amount to be paid to a mortgagee in case of a foreclosure or sale or redemption, the Court shall, unless the conduct of the mortgagee has been such as to disentitle him to costs, add to the mortgage-money such costs of suit as have been properly incurred by him since the decree for foreclosure or sale or redemption up to the time of actual payment.

11. Where property is mortgaged for successive debts to successive mortgagees, any mesne mortgagee may institute a suit to redeem the interests of the prior mortgagees and to foreclose the rights of those that are posterior to himself and of the mortgagor.

12. Where any property the sale of which is directed under this Order is subject to a prior mortgage, the Court may, with the consent of the prior mortgagee, direct that the property be sold free from the same, giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold.

13. (1) Such proceeds shall be brought into Court and applied as follows :—

first, in payment of all expenses incident to the sale or properly incurred in any attempted sale ;

secondly, in payment of whatever is due to the prior mortgagee on account of the prior mortgage, and of costs, properly incurred in connection therewith ;

thirdly, in payment of all interest due on account of the mortgage in consequence whereof the sale was directed, and of the costs of the suit in which the decree directing the sale was made ;

fourthly, in payment of the principal money due on account of that mortgage ; and

lastly, the residue (if any) shall be paid to the person proving himself to be interested in the property sold, or if there are more such persons than one, then to such persons according to their respective interest therein or upon their joint receipt.

(2) Nothing in this rule or in rule 12 shall be deemed to affect the powers conferred by section 57 of the Transfer of Property Act,* 1882.

14. (1) Where a mortgagee has obtained a decree for the payment of money in satisfaction of a claim arising under the mortgage, he shall not be entitled to bring the mortgaged property to sale otherwise than by instituting a suit for sale in enforcement of the mortgage, and he may institute such suit notwithstanding anything contained in Order II., rule 2.

(2) Nothing in sub-rule (1) shall apply to any territories to which the Transfer of Property Act,* 1882, has not been extended.

15. All the provisions contained in this Order as to the sale or redemption of mortgaged property shall, so far as may be, apply to property subject to a charge within the meaning of section 100 of the Transfer of Property Act,* 1882.

ORDER XXXV.

INTERPLEADER.

I. In every suit of interpleader the plaintiff shall, in addition to the other statements necessary for plaints, state—

- (a) that the plaintiff claims no interest in the subject-matter in dispute other than for charges or costs;
- (b) the claims made by the defendants severally; and
- (c) that there is no collusion between the plaintiff and any of the defendants

2. Where the thing claimed is capable of being paid into Court or placed in the custody of the Court, the plaintiff may be required to so pay or place it before he can be entitled to any order in the suit.

3. Where any of the defendants in an interpleader-suit is actually suing the plaintiff in respect of the subject-matter of such suit, the Court in which the suit against the plaintiff is pending shall, on being informed by the Court in which the interpleader-suit has been instituted, stay the proceedings as against him, and his costs in the suit so stayed may be provided for in such suit; but if, and in so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader-suit

4. (1) At the first hearing the Court may—

- (a) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the suit; or
- (b) if it thinks that justice or convenience so require, retain all parties until the final disposal of the suit.

(2) Where the Court finds that the admissions of the parties or other evidence enable it to do so, it may adjudicate the title to the thing claimed.

(3) Where the admissions of the parties do not enable the Court so to adjudicate, it may direct—

- (a) that an issue or issues between the parties be framed and tried, and
- (b) that any claimant be made a plaintiff in lieu of or in addition to the original plaintiff,

and shall proceed to try the suit in the ordinary manner.

5. Nothing in this Order shall be deemed to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords.

Agents and tenants may not institute interpleader-suits.

Illustrations.

(a) A deposits a box of jewels with B as his agent. C alleges that the jewels were wrongfully obtained from him by A, and claims them from B. B cannot institute an interpleader-suit against A and C.

(b) A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for a debt due from himself to C. A afterwards alleges that C's debt is satisfied, and C alleges the contrary. Both claim the jewels from B. B may institute an interpleader-suit against A and C.

6. Where the suit is properly instituted the Court may provide for the costs of the original plaintiff by giving him a charge on the thing claimed or in some other effectual way.

Charge for plaintiff's costs.

ORDER XXXVI.

SPECIAL CASE.

1. (1) Parties claiming to be interested in the decision of any question of fact or law may enter into an agreement in writing stating such question in the form of a case for the opinion of the Court, and providing that, upon the finding of the Court with respect to such question,—

Power to state case for Court's opinion.

(a) a sum of money fixed by the parties or to be determined by the Court shall be paid by one of the parties to the other of them; or

(b) some property, moveable or immoveable, specified in the agreement, shall be delivered by one of the parties to the other of them; or

(c) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.

(2) Every case stated under this rule shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and specify such documents as may be necessary to enable the Court to decide the question raised thereby.

2. Where the agreement is for the delivery of any property, or for the doing, or the refraining from doing any particular act, the estimated value of the property to be delivered, or to which the act specified has reference, shall be stated in the agreement.

Where value of subject-matter must be stated.

3. (1) The agreement, if framed in accordance with the rules herein before contained, may be filed in the Court which would have jurisdiction to entertain a suit, the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement.

Agreement to be filed and registered as suit.

(2) The agreement, when so filed, shall be numbered and registered as a suit between one or more of the parties claiming to be interested as plaintiff or plaintiffs, and the other or the others of them as defendant or defendants; and notice shall be given to all the parties to the agreement, other than the party or parties by whom it was presented.

4. Where the agreement has been filed, the parties to it shall be subject to the jurisdiction of the Court and shall be bound by the statements contained therein.

5. (1) The case shall be set down for hearing as a suit instituted in the ordinary manner, and the provisions of this Code shall apply to such suit so far as the same are applicable.

(2) Where the Court is satisfied, after examination of the parties, or after taking such evidence as it thinks fit,—

(a) that the agreement was duly executed by them,

(b) that they have a *bona-fide* interest in the question stated therein, and

(c) that the same is fit to be decided, it shall proceed to pronounce judgment thereon, in the same way as in an ordinary suit, and upon the judgment so pronounced a decree shall follow.

ORDER XXXVII.

SUMMARY PROCEDURE ON NEGOTIABLE INSTRUMENTS.

Application of Order.

1. This Order shall apply only to—

(a) the High Courts of Judicature at Fort William, Madras and Bombay;

(b) the Chief Court of Lower Burma,

(c) the Court of the Judicial Commissioner of Sind; and

(d) any other Court to which sections 532 to 537 of the Code of Civil Procedure,* 1882, have been already applied.

2. (1) All suits upon bills of exchange, hundis or promissory notes may, in case the plaintiff desires to proceed hereunder, be instituted by presenting a complaint in the form prescribed, but the summons shall be in Form No. 4 in Appendix B or in such other form as may be from time to time prescribed.

(2) In any case in which the plaint and summons are in such forms, respectively, the defendant shall not appear or defend the suit unless he obtains leave from a Judge as hereinafter provided so to appear and

* Act XIV. of 1882.

defend; and, in default his obtaining such leave or of his appearance and defence in pursuance thereof, the allegations in the plaint shall be deemed to be admitted, and the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons, together with interest at the rate specified (if any) to the date of the decree, and such sum for costs as may be prescribed, unless the plaintiff claims more than such fixed sum, in which case the costs shall be ascertained in the ordinary way, and such decree may be executed forthwith.

3. (1) The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon affidavits which disclose such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application.

(2) Leave to defend may be given unconditionally or subject to such terms as to payment into Court, giving security, framing and recording issues or otherwise as the Court thinks fit.

4. After decree the Court may, under special circumstances, set aside the decree and if necessary stay or set aside execution, and may give leave to the defendant to appear to the summons and to defend the suit, if it seems reasonable to the Court so to do, and on such terms as the Court thinks fit.

5. In any proceeding under this Order the Court may order the bill, hundi or note on which the suit is founded to be forthwith deposited with an officer of the Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

6 The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this Order for the recovery of the amount of such bill or note.

7. Save as provided by this Order, the procedure in suits hereunder shall be the same as the procedure in suits instituted in the ordinary manner.

ORDER XXXVIII.

ARREST AND ATTACHMENT BEFORE JUDGMENT.

Arrest before judgment.

1. Where at any stage of a suit, other than a suit of the nature referred to in section 16, clauses (a) to (d), the Court is satisfied, by affidavit or otherwise,—

Where defendant may be called upon to furnish security for appearance.

(a) that the defendant, with intent to delay the plaintiff, or to avoid any process of the Court or to obstruct or delay the execution of any decree that may be passed against him,—

(i) has absconded or left the local limits of the jurisdiction of the Court, or

(ii) is about to abscond or leave the local limits of the jurisdiction of the Court, or

(iii) has disposed of or removed from the local limits of the jurisdiction of the Court his property or any part thereof, or

(b) that the defendant is about to leave British India under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the Court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not furnish security for his appearance :

Provided that the defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiff's claim ; and such sum shall be held in deposit by the Court until the suit is disposed of or until the further order of the Court.

2. (1) Where the defendant fails to show such cause the Court shall order him either to deposit in Court money or other property sufficient to answer the claim against

him, or to furnish security for his appearance at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the suit, or make such order as it thinks fit in regard to the sum which may have been paid by the defendant under the proviso to the last preceding rule.

(2) Every surety for the appearance of a defendant shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit.

3. (1) A surety for the appearance of a defendant may at any time apply to the Court in which he became such surety to be discharged from his obligation.

(2) On such application being made, the Court shall summon the defendant to appear or, if it thinks fit, may issue a warrant for his arrest in the first instance.

(3) On the appearance of the defendant in pursuance of the summons or warrant, or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security.

4. Where the defendant fails to comply with any order under rule 2 or rule 3, the Court may commit him to the civil prison until the decision of the suit or, where a decree is passed against the defendant, until the decree has been satisfied :

Provided that no person shall be detained in prison under this rule in any case for a longer period than six months, nor for a longer period than six weeks when the amount or value of the subject-matter of the suit does not exceed fifty rupees :

Provided also that no person shall be detained in prison under this rule after he has complied with such order.

Attachment before Judgment.

5. (1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,—

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court,

the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the Court otherwise directs specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

6. (1) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Court, the Court may order that the property specified, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, be attached.

(2) Where the defendant shows such cause or furnishes the required security, and the property specified or any portion of it has been attached, the Court shall order the attachment to be withdrawn, or make such other order as it thinks fit.

7. Save as otherwise expressly provided, the attachment shall be made in the manner provided for the attachment of property in execution of a decree.

Mode of making attachment.

8. Where any claim is preferred to property attached before judgment, such claim shall be investigated in the manner hereinbefore provided for the investigation of claims to property attached in execution of a decree for the payment of money.

Investigation of claim to property attached before judgment.

9. Where an order is made for attachment before judgment, the Court shall order the attachment to be withdrawn when the defendant furnishes the security required, together with security for the costs of the attachment, or when the suit is dismissed.

Removal of attachment when security furnished or suit dismissed.

10. Attachment before judgment shall not affect the rights, existing

Attachment before judgment not to affect rights of strangers, nor bar decree-holder from applying for sale.

prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.

11. Where property is under attachment by virtue of the provisions of

Property attached before judgment not to be re-attached in execution of decree.

this Order and a decree is subsequently passed in favour of the plaintiff, it shall not be necessary upon an application for execution of such decree to apply for a re-attachment of the property.

12. Nothing in this Order shall be deemed to authorize the plaintiff to

Agricultural produce not attachable before judgment.

apply for the attachment of any agricultural produce in the possession of an agriculturist, or to empower the Court to order the attachment or production of such produce.

ORDER XXXIX.
TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS.*Temporary Injunctions.*

Cases in which temporary injunction may be granted.

1. Where in any suit it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defraud his creditors,

the Court may by order grant a temporary injunction to restrain such act or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, until the disposal of the suit or until further orders.

2. (1) In any suit for restraining the defendant from committing a

Injunction to restrain repetition or continuance of breach.

breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may by order grant such injunction on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.

(3) In case of disobedience, or of breach of any such terms, the Court granting an injunction may order the property of the person guilty of such

disobedience or breach to be attached and may also order such person to be detained in the civil prison for a term not exceeding six months, unless in the meantime the Court directs his release.

(4) No attachment under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold, and out of the proceeds the Court may award such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled thereto.

3. The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party.

4. Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made there- to by any party dissatisfied with such order.

5. An injunction directed to a corporation is binding not only on the corporation itself, but also on all members and officers of the corporation whose personal action it seeks to restrain.

Interlocutory Orders

6. The Court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any moveable property, being the subject-matter of such suit, or attached before judgment in such suit, which is subject to speedy and natural decay, or which for any other just and sufficient cause it may be desirable to have sold at once.

7. (1) The Court may, on the application of any party to a suit, and on such terms as it thinks fit,—

(a) make an order for the detention, preservation or inspection of any property which is the subject-matter of such suit, or as to which any question may arise therein;

(b) for all or any of the purposes aforesaid authorize any person to enter upon or into any land or building in the possession of any other party to such suit; and

(c) for all or any of the purposes aforesaid authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

(2) The provisions as to execution of process shall apply, *mutatis mutandis*, to persons authorized to enter under this rule.

8. (1) An application by the plaintiff for an order under rule 6 or rule 7 may be made after notice to the defendant, at any time after institution of the suit.

Application for such orders to be after notice.

(2) An application by the defendant for a like order may be made after notice to the plaintiff at any time after appearance.

9. Where land paying revenue to Government, or a tenure liable to sale, is the subject-matter of a suit, if the party

When party may be put in immediate possession of land the subject-matter of suit.

in possession of such land or tenure neglects to pay the Government revenue, or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure is consequently ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may, upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the Court), be put in immediate possession of the land or tenure ;

and the Court in its decree may award against the defaulter the amount so paid, with interest thereon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereon at such rate as the Court orders, in any adjustment of accounts which may be directed in the decree passed in the suit.

10. Where the subject-matter of a suit is money or some other thing

Deposit of money, etc., in Court.

capable of delivery and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.

ORDER XL.

Appointment of Receivers.

Appointment of receivers.

I. (1) Where it appears to the Court to be just and convenient, the Court may by order—

- (a) appoint a receiver of any property, whether before or after decree ;
- (b) remove any person from the possession or custody of the property ;
- (c) commit the same to the possession, custody or management of the receiver, and
- (d) confer upon the receiver all such powers as to bringing and defending suits and for the realisation, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit.

(2) Nothing in this rule shall authorize the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove.

2. The Court may by general or special order fix the amount to be paid as remuneration for the services of the receiver.

Duties.

3 Every receiver so appointed shall—

- (a) furnish such security (if any) as the Court thinks fit, duly to account for what he shall receive in respect of the property ;
- (b) submit his accounts at such periods and in such form as the Court directs ;
- (c) pay the amount due from him as the Court directs ; and
- (d) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

Enforcement of receiver's duties.

4. Where a receiver—

- (a) fails to submit his accounts at such periods and in such form as the Court directs, or
- (b) fails to pay the amount due from him as the Court directs, or
- (c) occasions loss to the property by his wilful default or gross negligence,

the Court may direct his property to be attached and may sell such property, and may apply the proceeds to make good any amount found to be due from him or any loss occasioned by him, and shall pay the balance (if any) to the receiver.

5. Where the property is land paying revenue to the Government, or

When Collector may be appointed receiver

land of which the revenue has been assigned or redeemed, and the Court considers that the interests of those concerned will be promoted by the management of the Collector, the Court may with the consent of the Collector, appoint him to be receiver of such property.

ORDER XLI.

Appeals from Original Decrees.

1. (1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded.

Form of appeal. What to accompany memorandum.

(2) The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative ; and such grounds shall be numbered consecutively.

Contents of memorandum.

2. The appellant shall not, except by leave of the Court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal; but the Appellate Court, in deciding the appeal, shall not be confined to the grounds of objection set forth in the memorandum of appeal or taken by leave of the Court under this rule :

Provided that the Court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground.

3. (1) Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there.

Rejection or amendment of memorandum.

(2) Where the Court rejects any memorandum, it shall record the reasons for such rejection.

(3) Where a memorandum of appeal is amended, the Judge, or such officer as he appoints in this behalf, shall sign or initial the amendment.

4. Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the Appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be.

One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all.

Stay of proceedings and of execution.

5. (1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree, but the Appellate Court may for sufficient cause order stay of execution of such decree.

Stay by Appellate Court.

(2) Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

Stay by Court which passed the decree.

(3) No order for stay of execution shall be made under sub rule (1); or sub-rule (2), unless the Court making it is satisfied—

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binden upon him.

(4) Notwithstanding anything contained in sub-rule (3), the Court may make an *ex-parte* order for stay of execution pending the hearing of the application.

6. (1) Where an order is made for the execution of a decree from which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be taken for the restitution of any property which may be or has been taken in execution of the decree or for the payment of the value of such property and for the due performance of the decree or order of the Appellate Court, or the Appellate Court may for like cause direct the Court which passed the decree to take such security.

(2) Where an order has been made for the sale of immoveable property in execution of a decree, and an appeal is pending, from such decree, the sale shall, on the application of the judgment-debtor to the Court which made the order, be stayed on such terms as to giving security or otherwise as the Court thinks fit until the appeal is disposed of.

7. No such security as is mentioned in rules 5 and 6 shall be required from the Secretary of State for India in Council or, where the Government has undertaken the defence of the suit, from any public officer sued in respect of an act alleged to be done by him in his official capacity.

8. The powers conferred by rules 5 and 6 shall be exercisable where an appeal may be or has been preferred not from the decree but from an order made in execution of such decree.

Procedure on admission of appeal

9. (1) Where a memorandum of appeal is admitted, the appellate Court or the proper officer of that Court shall endorse thereon the date of presentation, and shall register the appeal in a book to be kept for the purpose.

Registry of memorandum of appeal.

(2) Such book shall be called the Register of Appeals.

10. (1) The Appellate Court may in its discretion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both:

Provided that the Court shall demand such security in all cases in which the appellant is residing out of British India, and is not possessed of any sufficient immoveable property within British India other than the property (if any) to which the appeal relates.

Where appellant resides out of British India

(2) Where such security is not furnished within such time as the Court orders, the Court shall reject the appeal.

11. (1) The Appellate Court, after sending for the record if it thinks fit so to do, and after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day, may dismiss the appeal without sending notice to the Court from whose decree the appeal is preferred and without serving notice on the respondent or his pleader.

(2) If on the day fixed or any other day to which the hearing may be adjourned the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

(3) The dismissal of an appeal under this rule shall be notified to the Court from whose decree the appeal is preferred.

12. (1) Unless the Appellate Court dismisses the appeal under rule 11, it shall fix a day for hearing the appeal.

(2) Such day shall be fixed with reference to the current business of the Court, the place of residence of the respondent, and the time necessary for the service of the notice of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day.

13. (1) Where the appeal is not dismissed under rule 11, the Appellate Court shall send notice of the appeal to the Court from whose decree the appeal is preferred.

(2) Where the appeal is from the decree of a Court, the records of which are not deposited in the Appellate Court, the Court receiving such notice shall send with all practicable despatch all material papers in the suit, or such papers as may be specially called for by the Appellate Court.

(3) Either party may apply in writing to the Court from whose decree the appeal is preferred, specifying any of the papers in such Court of which he requires copies to be made; and copies of such papers shall be made at the expense of, and given to, the applicant.

14. (1) Notice of the day fixed under rule 12 shall be affixed in the Appellate Court-house, and a like notice shall be sent by the Appellate Court to the Court from whose decree the appeal is preferred, and shall be served on the respondent or on his pleader in the Appellate Court in the manner provided for the service on a defendant of a summons to appear and answer, and all the provisions applicable to such summons and to proceedings with reference to the service thereof, shall apply to the service of such notice.

(2) Instead of sending the notice to the Court from whose decree the appeal is preferred, the Appellate Court may itself cause the notice to be served on the respondent or his pleader under the provisions above referred to.

- 15.** The notice to the respondent shall declare that, if he does not appear in the Appellate Court on the day so fixed, the appeal will be heard *ex parte*.
 Contents of notice.

Procedure on hearing.

- 16.** (1) On the day fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal.
 Right to begin.

(2) The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

- 17.** (1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.
 Dismissal of appeal for appellant's default.

(2) Where the appellant appears and the respondent does not appear, the appeal shall be heard *ex parte*.
 Hearing appeal *ex parte*.

- 18.** Where on the day fixed, or on any other day to which the hearing may be adjourned, it is found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit, within the period fixed, the sum required to defray the cost of serving the notice, the Court may make an order that the appeal be dismissed :
 Dismissal of appeal where notice not served in consequence of appellant's failure to deposit costs.

Provided that no such order shall be made although the notice has not been served upon the respondent, if on any such day the respondent appears when the appeal is called on for hearing.

- 19.** Where an appeal is dismissed under rule 11, sub-rule (2), or rule 17 or rule 18, the appellant may apply to the Appellate Court for the re-admission of the appeal; and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit.
 Re-admission of appeal dismissed for default.

- 20.** Where it appears to the Court at the hearing that any person who was a party to the suit in the Court from whose decree the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court and direct that such person be made a respondent.
 Power to adjourn hearing and direct persons appearing interested to be made respondents.

- 21.** Where an appeal is heard *ex parte* and judgment is pronounced against the respondent, he may apply to the Appellate Court to re-hear the appeal; and, if he satisfies the Court that the notice was not
 Re-hearing on application of respondent against whom *ex parte* decree made.

duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.

22. (1) Any respondent, though he may not have appealed from any

Upon hearing, respondent may object to decree as if he had preferred separate appeal. **part of the decree, may not only support the decree on any of the grounds decided against him in the Court below, but take any cross-objection to the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.**

(2) Such cross-objection shall be in the form of a memorandum, and

Form of objection and provisions applicable thereto. **the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.**

(3) Unless the respondent files with the objection a written acknowledgment from the party who may be affected by such objection or his pleader of having received a copy thereof, the Appellate Court shall cause a copy to be served, as soon as may be after the filing of the objection, on such party or his pleader at the expense of the respondent.

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

(5) The provisions relating to pauper appeals shall, so far as they can be made applicable, apply to an objection under this rule

23. Where the Court from whose decree an appeal is preferred has dis-

Remand of case by Appellate Court. **posed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit ; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.**

24. Where the evidence upon the record is sufficient to enable the

Where evidence on record sufficient, Appellate Court may determine case finally. **Appellate Court to pronounce judgment, the Appellate Court may, after re-settling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.**

25. Where the Court from whose decree the appeal is preferred has

Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from.

omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required ;

and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor.

26. (1) Such evidence and findings shall form part of the record in the

Findings and evidence to be put on record. Objections to finding.

suit ; and either party may within a time to be fixed by the Appellate Court, present a memorandum of objections to any finding.

(2) After the expiration of the period so fixed for presenting such memorandum the Appellate Court shall proceed to determine the appeal.

Determination of appeal.

27. (1) The parties to an appeal shall not be entitled to produce ad-

Production of additional evidence in Appellate Court.

ditional evidence, whether oral or documentary, in the Appellate Court. But if—

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

28. Wherever additional evidence is allowed to be produced, the Ap-

Mode of taking additional evidence.

pellate Court may either take such evidence, or direct the Court from whose decree the appeal is preferred, or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court.

29. Where additional evidence is directed or allowed to be taken, the

Points to be defined and recorded.

Appellate Court shall specify the points to which the evidence is to be confined, and record on its proceedings the points so specified.

Judgment in appeal.

30. The Appellate Court, after hearing the parties or their pleaders and

Judgment when and where pronounced.

referring to any part of the proceedings, whether on appeal or in the Court from whose decree the appeal is preferred, to which

reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day, of which notice shall be given to the parties or their pleaders.

Contents, date and signature of judgment.

31. The judgment of the Appellate Court shall be in writing and shall state—

- (a) the points for determination ;
- (b) the decision thereon ;
- (c) the reasons for the decision ; and
- (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled ;

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

32. The judgment may be for confirming, varying or reversing the decree from which the appeal is preferred;

What judgment may direct. or, if the parties to the appeal agree as to the term which the decree in appeal shall take, or as to the order to be made in appeal, the Appellate Court may pass a decree or make an order accordingly.

33. The Appellate Court shall have power to pass any decree and

Power of Court of Appeal. make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection.

Illustration.

A claims a sum of money as due to him from X or Y, and in a suit against both obtains a decree against X. X. appeals and A and Y are respondents. The Appellate Court decides in favour of X. It has power to pass a decree against Y.

34. Where the appeal is heard by more Judges than one, any Judge

Dissent to be recorded. dissenting from the judgment of the Court shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reasons for the same.

Decree in appeal.

35. (1) The decree of the Appellate Court shall bear date the day on which the judgment was pronounced.

(2) The decree shall contain the number of the appeal, the names and descriptions of the appellant and respondent, and a clear specification of the relief granted or other adjudication made.

(3) The decree shall also state the amount of costs incurred in the appeal, and by whom, or out of what property, and in what proportions such costs and the costs in the suit are to be paid.

(4) The decree shall be signed and dated by the Judge or Judges who passed it :

Provided that where there are more Judges than one and there is a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree.

Judge dissenting from judgment need not sign decree.

36 Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the Appellate Court and at their expense.

Copies of judgment and decree to be furnished to parties.

37. A copy of the judgment and of the decree, certified by the Appellate Court or such officer as it appoints in this behalf, shall be sent to the Court which passed the decree appealed from and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the register of civil suits.

Certified copy of decree to be sent to Court whose decree appealed from.

ORDER XLII.

Appeals from Appellate Decrees.

I. Rules of Order XLI. shall apply, so far as may be, to appeals from appellate decrees.

Procedure.

ORDER XLIII.

Appeals from Orders.

I. An appeal shall lie from the following orders under the provisions of section 104, namely :—

Appeals from orders.

- (a) an order under rule 10 of Order VII. returning a plaint to be presented to the proper Court ;
- (b) an order under rule 10 of Order VIII. pronouncing judgment against a party ;
- (c) an order under rule 9 of Order IX. rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit ;
- (d) an order under rule 13 of Order IX. rejecting an application (in a case open to appeal) for an order to set aside a decree passed *ex parte* ;
- (e) an order under rule 4 of Order X. pronouncing judgment against a party ;

- (f) an order under rule 21 of Order XI;
- (g) an order under rule 10 of Order XVI. for the attachment of property;
- (h) an order under rule 20 of Order XVI. pronouncing judgment against a party;
- (i) an order under rule 34 of Order XXI. on an objection to the draft of a document or of an endorsement;
- (j) an order under rule 72 or rule 92 of Order XXI setting aside or refusing to set aside a sale;
- (k) an order under rule 9 of Order XXII. refusing to set aside the abatement or dismissal of a suit;
- (l) an order under rule 10 of Order XXII. giving or refusing to give leave;
- (m) an order under rule 3 of Order XXIII. recording or refusing to record an agreement, compromise or satisfaction;
- (n) an order under rule 2 of Order XXV. rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;
- (o) an order under rule 3 or rule 8 of Order XXXIV. refusing to extend the time for the payment of mortgage-money;
- (p) orders in interpleader-suits under rule 3, rule 4 or rule 6 of Order XXXV.;
- (q) an order under rule 2, rule 3 or rule 6 of Order XXXVIII.;
- (r) an order under rule 1, rule 2, rule 4 or rule 10 of Order XXXIX.;
- (s) an order under rule 1 or rule 4 of Order XL;
- (t) an order of refusal under rule 19 of order XLI. to re-admit, or under rule 21 of Order XLI. to re-hear, an appeal;
- (u) an order under rule 23 of Order XLI. remanding a case, where an appeal would lie from the decree of the Appellate Court;
- (v) an order made by any Court other than a High Court refusing the grant of a certificate under rule 6 of Order XLV.;
- (w) an order under rule 4 of Order XLVII. granting an application for review.

Procedure.

2. The rules of Order XLI. shall apply so far as may be, to appeals from orders.

ORDER XLIV.

Pauper Appeals.

1. Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by Who may appeal as pauper.

a memorandum of appeal, and may be allowed to appeal as a pauper, subject, in all matters including the presentation of such application, to the provisions relating to suits by paupers, in so far as those provisions are applicable:

Provided that the Court shall reject the application unless, upon a perusal thereof and of the judgment and decree appealed from, it sees reason to think that the decree is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust.

Procedure on application for admission of appeal.

2. The inquiry into the pauperism of the applicant may be made either by the Appellate Court or under the orders of the Appellate Court by the Court from whose decision the appeal is preferred:

Inquiry into pauperism.

Provided that, if the applicant was allowed to sue or appeal as a pauper in the Court from whose decree the appeal is preferred, no further inquiry in respect of his pauperism shall be necessary, unless the Appellate Court sees cause to direct such inquiry.

ORDER XLV.

Appeals to the King in Council.

1. In this Order, unless there is something repugnant in the subject or context, the expression "decree" shall include a final order.

Application to Court whose decree complained of

2. Whoever desires to appeal to His Majesty in Council shall apply by petition to the Court whose decree is complained of.

3. (1) Every petition shall state the grounds of appeal and pray for a certificate either that, as regards amount or value and nature, the case fulfils the requirements of section 110, or that it is otherwise a fit one for appeal to His Majesty in Council.

Certificate as to value or fitness.

(2) Upon receipt of such petition, the Court shall direct notice to be served on the opposite party to show cause why the said certificate should not be granted.

4. For the purposes of pecuniary valuation, suits involving substantially the same questions for determination and decided by the same judgment may be consolidated: but suits decided by separate judgments shall not be consolidated, notwithstanding that they involve substantially the same questions for determination.

Consolidation of suits.

5. In the event of any dispute arising between the parties as to the amount or value of the subject-matter of the suit in the Court of first instance, or as to the amount or value of the subject-matter in dispute on appeal to His Majesty in Council, the Court to which a petition

Remission of dispute to Court of first instance.

for a certificate is made under rule 2 may, if it thinks fit, refer such dispute for report to the Court of first instance, which last-mentioned Court shall proceed to determine such amount or value and shall return its report together with the evidence to the Court by which the reference was made.

Effect of refusal of certificate.

6. Where such certificate is refused, the petition shall be dismissed.

7. (1) Where the certificate is granted, the applicant shall, within six months from the date of the decree complained of, or within six weeks from the date of the grant of the certificate, whichever is the later date,—

Security and deposit required on grant of certificate.

- (a) furnish security for the costs of the respondent, and
- (b) deposit the amount required to defray the expense of translating, transcribing, indexing and transmitting to His Majesty in Council a correct copy of the whole record of the suit except—
 - (1) formal documents directed to be excluded by any order of, His Majesty in Council in force for the time being;
 - (2) papers which the parties agree to exclude,
 - (3) accounts, or portions of accounts, which the officer empowered by the Court for that purpose considers unnecessary, and which the parties have not specifically asked to be included; and
 - (4) such other documents as the High Court may direct to be excluded.

(2) Where the applicant prefers to print in India the copy of the record except as aforesaid, he shall also, within the time mentioned in sub-rule (1), deposit the amount required to defray the expense of printing such copy.

Admission of appeal and procedure thereon.

8. Where such security has been furnished and deposit made to the satisfaction of the Court, the Court shall—

- (a) declare the appeal admitted.
- (b) give notice thereof to the respondent,
- (c) transmit to His Majesty in Council under the seal of the Court a correct copy of the said record, except as aforesaid, and
- (d) give to either party one or more authenticated copies of any of the papers in the suit on his applying therefor and paying the reasonable expenses incurred in preparing them.

9. At any time before the admission of the appeal, the Court may, upon cause shown, revoke the acceptance of any such security, and make further directions thereon.

Revocation of acceptance of security.

10. Where at any time after the admission of an appeal but before the transmission of the copy of the record, except as aforesaid, to his Majesty in Council, such security appears inadequate,

Power to order further security or payment.

or further payment is required for the purpose of translating, transcribing, printing indexing or transmitting the copy of the record, except as aforesaid,

the Court may order the appellant to furnish, within a time to be fixed by the Court, other and sufficient security, or to make, within like time, the required payment.

Effect of failure to comply with order. **11.** Where the appellant fails to comply with such order, the proceedings shall be stayed,

and the appeal shall not proceed without an order in this behalf of His Majesty in Council,

and in the meantime execution of the decree appealed from shall not be stayed.

12. When the copy of the record, except as aforesaid, has been transmitted to His Majesty in Council, the appellant may obtain a refund of the balance (if any) of the amount which he has deposited under rule 7.

13. (1) Notwithstanding the grant of a certificate for the admission of any appeal, the decree appealed from shall be unconditionally executed, unless the Court otherwise directs.

(2) The Court may, if it thinks fit on special cause shown by any party interested in the suit, or otherwise appearing to the Court,—

(a) impound any moveable property in dispute or any part thereof, or

(b) allow the decree appealed from to be executed, taking such security from the respondent as the Court thinks fit for the due performance of any order which His Majesty in Council may make on the appeal, or

(c) stay the execution of the decree appealed from, taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed from, or of any order which His Majesty in Council may make on the appeal, or

(d) place any party seeking the assistance of the Court under such conditions or give such other direction respecting the subject-matter of the appeal, as it thinks fit, by the appointment of a receiver or otherwise.

14. (1) Where at any time during the pendency of the appeal security furnished by either party appears inadequate, the Court may, on the application of the other party, require further security

(2) In default of such further security being furnished as required by the Court,—

(a) If the original security was furnished by the appellant, the Court may, on the application of the respondent, execute the decree appealed from as if the appellant had furnished no such security

- (b) if the original security was furnished by the respondent, the Court shall, so far as may be practicable, stay the further execution of the decree, and restore the parties to the position in which they respectively were when the security which appears inadequate was furnished, or give such direction respecting the subject-matter of the appeal as it thinks fit

15. (1) Whoever desires to obtain execution of any order of His Majesty in Council shall apply by petition, accompanied by a certified copy of the decree passed or order made in appeal and sought to be executed, to the Court from which the appeal to His Majesty was preferred.

Procedure to enforce orders of King in Council.

(2) Such Court shall transmit the order of His Majesty in Council to the Court which passed the first decree appealed from, or to such other Court as His Majesty in Council by such order may direct, and shall (upon the application of either party) give such directions as may be required for the execution of the same; and the Court to which the said order is so transmitted shall execute it accordingly, in the manner and according to the provisions applicable to the execution of its original decrees.

(3) When any monies expressed to be payable in British currency are payable in India under such order, the amount so payable shall be estimated according to the rate of exchange for the time being fixed at the date of the making of the order by the Secretary of State for India in Council with the concurrence of the Lords Commissioners of His Majesty's Treasury for the adjustment of financial transactions between the Imperial and the Indian Governments.

16. The orders made by the Court which executes the order of His Majesty in Council, relating to such execution, shall be appealable in the same manner and subject to the same rules as the orders of such Court relating to the execution of its own decrees.

Appeal from order relating to execution.

ORDER XLVI.

REFERENCE.

1. Where, before or on the hearing of a suit or an appeal in which the decree is not subject to appeal, or where in the execution of any such decree, any question of law or usage having the force of law arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court.

2. The Court may either stay the proceedings or proceed in the case notwithstanding such reference, and may pass a decree or make an order contingent upon the decision of the High Court on the point referred;

Court may pass decree contingent upon decision of High Court.

but no decree or order shall be executed in any case in which such reference is made until the receipt of a copy of the judgment of the High Court upon the reference.

3. The High Court, after hearing the parties if they appear and desire judgment of High Court to be transmitted, and case disposed of accordingly. to be heard, shall decide the point so referred, and shall transmit a copy of its judgment, under the signature of the Registrar, to the Court by which the reference was made, and such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court.

Costs of reference to High Court. 4. The costs (if any) consequent on a reference for the decision of the High Court shall be costs in the case

5. Where a case is referred to the High Court under rule 1, the High Court may return the case for amendment, and may alter, cancel or set aside any decree or order which the Court making the reference has passed or made in the case out of which the reference arose, and make such order as it thinks fit.

Power to refer to High Court questions as to jurisdiction in small causes. 6. (1) Where at any time before judgment a Court in which a suit has been instituted doubts whether the suit is cognizable by a Court of Small Causes or is not so cognizable, it may submit the record to the High Court with a statement of its reasons for the doubt as to the nature of the suit.

(2) On receiving the record and statement, the High Court may order the Court either to proceed with the suit or to return the plaint for presentation to such other Court as it may in its order declare to be competent to take cognizance of the suit.

Power to District Court to submit for revision proceedings had under mistake as to jurisdiction in small causes. 7. (1) Where it appears to a District Court that a Court subordinate thereto has, by reason of erroneously holding a suit to be cognizable by a Court of Small Causes or not to be so cognizable, failed to exercise a jurisdiction vested in it by law, or exercised a jurisdiction not so vested, the District Court may, and if required by a party shall, submit the record to the High Court with a statement of its reasons for considering the opinion of the subordinate Court with respect to the nature of the suit to be erroneous.

(2) On receiving the record and statement the High Court may make such order in the case as it thinks fit.

(3) With respect to any proceedings subsequent to decree in any case submitted to the High Court under this rule, the High Court may make such order as in the circumstance appears to it to be just and proper.

(4) A Court subordinate to a District Court shall comply with any requisition which the District Court may make for any record or information for the purposes of this rule

ORDER XLVII.

REVIEW.

Application for review of judgment. 1. (1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

2. An application for review of a decree or order of a Court, not being a High Court, upon some ground other than the discovery of such new and important matter or evidence as is referred to in rule 1 or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree, shall be made only to the Judge who passed the decree or made the order sought to be reviewed, but any such application may, if the judge who passed the decree or made the order has ordered notice to issue under rule 4, sub-rule (2), proviso (a), be disposed of by his successor.

Form of applications for review.

3. The provisions as to the term of preferring appeals shall apply, *mutatis mutandis*, to applications for review.

Application where rejected.

4. (1) Where it appears to the Court that there is not sufficient ground for a review, it shall reject the application.

Application where granted.

(2) Where the Court is of opinion that the application for review should be granted, it shall grant the same:

Provided that—

(a) no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree or order, a review of which is applied for; and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not

within his knowledge, or could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation.

5. Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application and no other Judge or Judges of the Court shall hear the same.

6. (1) Where the application for a review is heard by more than one Judge and the Court is equally divided, the application shall be rejected.

(2) Where there is a majority, the decision shall be according to the opinion of the majority.

7. (1) An order of the Court rejecting the application shall not be appealable, but an order granting an application may be objected to on the ground that the application was—

(a) in contravention of the provisions of rule 2,

(b) in contravention of the provisions of rule 4, or

(c) after the expiration of the period of limitation prescribed therefor and without sufficient cause.

Such objection may be taken at once by an appeal from the order granting the application or in any appeal from the final decree or order passed or made in the suit.

(2) Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, where it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

(3) No order shall be made under sub-rule (2) unless notice of the application has been served on the opposite party.

8. When an application for review is granted, a note thereof shall be made in the register and the Court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.

Registry of application granted and order for re-hearing.

9. No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained.

Bar of certain applications.

ORDER XLVIII.

Miscellaneous.

1. (1) Every process issued under this Code shall be served at the expense of the party on whose behalf it is issued, unless the Court otherwise directs.
 Process to be served at expense of party issuing.

(2) The Court-fee chargeable for such service shall be paid within a time to be fixed before the process is issued.
 Costs of service

2. All orders, notices and other documents required by this Code to be given to or served on any person shall be served in the manner provided for the service of summons
 Orders and notices how served.

3. The forms given in the appendices, with such variation as the circumstances of each case may require, shall be used for the purposes therein mentioned.
 Use of forms in appendices.

ORDER XLIX.

Chartered High Courts.

1 Notice to produce documents, summonses to witnesses, and every other judicial process issued in the exercise of the original civil jurisdiction of the High Court, and of its matrimonial testamentary and intestate jurisdictions, except summonses to defendants, writs of execution and notices to respondents may be served by the attorneys in the suits, or by persons employed by them, or by such other persons as the High Court, by any rule or order, directs
 Who may serve processes of High Court.

2 Nothing in this schedule shall be deemed to limit or otherwise affect any rules in force at the commencement of this Code for the taking of evidence or the recording of judgments and orders by a Chartered High Court.
 Saving in respect of Chartered High Courts.

3 The following rules shall not apply to any Chartered High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, namely :—
 Application of rules

(1) rule 10 and rule 11, clauses (b) and (c), of Order VII.;

(2) rule 3 of Order X.;

(3) rule 2 of Order XVI.;

(4) rules 5, 6, 8, 9, 10, 11, 13, 14, 15 and 16 (so far as relates to the manner of taking evidence) of Order XVIII.;

(5) rules 1 to 8 of Order XX.;

(6) rule 7 of Order XXXIII. (so far as relates to the making of a memorandum);

and rule 35 of Order XLI, shall not apply to any such High Court in the exercise of its appellate jurisdiction.

ORDER L.

Provincial Small Cause Courts.

1. The provisions hereinafter specified shall not extend to Courts constituted under the Provincial Small Causes Courts Act, 1887,* or to Courts exercising the jurisdiction of a Court of Small Causes under that Act, that is to say—

(a) so much of this schedule as relates to—

(i) suits excepted from the cognizance of a Court of Small Causes or the execution of decrees in such suits;

(ii) the execution of decrees against immoveable property or the interest of a partner in partnership (property);

(iii) the settlement of issues, and

(b) the following rules and orders,—

Order II., r. 1 (frame of suit);

Order X., r. 3 (record of examination of parties);

Order XV, except so much of rule 4 as provides for the pronouncement at once of judgment;

Order XVIII., rules 5 to 12 (evidence);

Orders XLI. to XLV. (appeals);

Order XLVII., rules 2, 3, 5, 6, 7 (review);

Order LI.

ORDER LI.

Presidency Small Cause Courts.

(1) Save as provided in rules 22 and 23 of Order V. rules 4 and 7 of Order XXI., and rule 4 of Order XXVI., and by the Presidency Small Cause Courts Act, 1882,† this schedule shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras and Bombay.

* Act IX. of 1887.

† Act XV. of 1882.

APPENDIX A.

PLEADINGS.

(1) TITLES OF SUITS.

IN THE COURT OF

A. B. (add description and residence) Plaintiff,
against

C. D. (add description and residence) Defendant.

(2) DESCRIPTION OF PARTIES IN PARTICULAR CASES.

The Secretary of State for India in Council

The Advocate-General of

The Collector of

The State of

The A. B. Company, Limited, having its registered office at

A. B., a public officer of the C. D. company.

A. B. (add description and residence), on behalf of himself and all other creditors of C. D., late of (add description and residence).

A B. (add description and residence), on behalf of himself and all other holders of debentures issued by the Company, Limited.

The Official Receiver.

A. B., a minor (*add description and residence*), by C. D. [or by the Court of Wards], his next friend.

A. B. (add description and residence), a person of unsound mind [or of weak mind], by C. D., his next friend.

A. B., a firm carrying on business in partnership at

A. B. (add description and residence), by his constituted attorney
C. D. (add description and residence).

A. B. (*add description and residence*), Shebait of Thakur

A. B. (*add description and residence*), executor of C. D., deceased.

A. B. (*add description and residence*), heir of C. D., deceased.

(3) PLAINTS.

No 1.

MONEY LENT.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , he lent the defendant
rupees repayable on the day of
 2. The defendant has not paid the same. except rupees
paid on the day of 19 .
 - [*If the plaintiff claims exemption from any law of limitation, say :—*]
 3. The plaintiff was a minor [*or insane*] from the day of
till the day of
 4. [*Facts showing when the cause of action arose and that the Court has jurisdiction.*]
 5. The value of the subject-matter of the suit for the purpose of jurisdiction is rupees and for the purpose of court-fees is rupees.
 6. The plaintiff claims rupees, with interest at per cent.
from the day of 19 .
-

No. 2.

MONEY OVERPAID.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the plaintiff agreed to buy
and the defendant agreed to sell bars of silver at annas per tola of
fine silver.
2. The plaintiff procured the said bars to be assayed by E. F., who
was paid by the defendant for such assay, and E. F. declared each of the
bars to contain 1,500 tolas of fine silver, and the plaintiff accordingly paid
the defendant rupees.
3. Each of the said bars contained only 1,200 tolas of fine silver, of
which fact the plaintiff was ignorant when he made the payment.
4. The defendant has not repaid the sum so overpaid.

[*As in paras. 4 and 5 of Form No. 1, and Relief claimed.*]

No. 3.

GOODS SOLD AT A FIXED PRICE AND DELIVERED.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. On the day of 19 , *E. F.* sold and delivered to the defendant [one hundred barrels of flour, *or* the goods mentioned in the schedule hereto annexed, *or* sundry goods.]

2. The defendant promised to pay rupees for the said goods on delivery [*or* on the day of , *some day before the plaint was filed*]

3. He has not paid the same.

4. *E. F.* died on the day of 19 . By his last will he appointed his brother, the plaintiff, his executor.

[*As in paras. 4 and 5 of Form No. 1.*]

7. The plaintiff as executor of *E. F.* claims [*Relief claimed*]

No. 4.

GOODS SOLD AT A REASONABLE PRICE AND DELIVERED.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. On the day of 19 , plaintiff sold and delivered to the defendant [sundry articles of house-furniture], but no express agreement was made as to the price.

2. The goods were reasonably worth rupees

3. The defendant has not paid the money.

[*As in paras. 4 and 5 of Form No. 1, and Relief claimed.*]

No. 5.

GOODS MADE AT DEFENDANT'S REQUEST, AND NOT ACCEPTED.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. On the day of 19 , *E. F.* agreed with the plaintiff that the plaintiff should make for him [*six tables and fifty chairs*], and that *E. F.* should pay for the goods on delivery rupees.

2. The plaintiff made the goods, and on the day of 19 offered to deliver them to *E. F.*, and has ever since been ready and willing so to do.

3. *E. F.*, has not accepted the goods or paid for them.

[*As in paras. 4 and 5 of Form No. 1, and Relief claimed.*]

No. 6.

DEFICIENCY UPON A RE-SALE [GOODS SOLD AT AUCTION].

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. On the day of 19 , the plaintiff put up at auction sundry [goods] subject to the condition that all goods not paid for and removed by the purchaser within [ten days] after the sale should be re-sold by auction on his account, of which condition the defendant had notice.

2. The defendant purchased [one crate of crockery] at the auction at the price of rupees.

3. The plaintiff was ready and willing to deliver the goods to the defendant on the date of the sale and for [ten days] after.

4. The defendant did not take away the goods purchased by him, nor pay for them within [ten days] after the sale, nor afterwards.

5. On the day of 19 , the plaintiff re-sold the [crate of crockery], on account of the defendant, by public auction, for rupees.

6. The expenses attendant upon re-sale amounted to rupees.

7. The defendant has not paid the deficiency thus arising, amounting to rupees.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 7.

SERVICES AT A REASONABLE RATE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. Between the day of 19 , and the day of 19 , at , plaintiff [executed sundry drawings, designs and diagrams] for the defendant, at his request; but no express agreement was made as to the sum to be paid for such services

2. The services were reasonably worth rupees.

3. The defendant has not paid the money.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 8.

SERVICES AND MATERIALS AT A REASONABLE COST.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. On the day of 19 , at , the plaintiff built a house [known as No. , in], and furnished the materials

therefor, for the defendant, at his request, but no express agreement was made as to the amount to be paid for such work and materials.

2. The work done and materials supplied were reasonably worth rupees.
3. The defendant has not paid the money.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 9

USE AND OCCUPATION.

(Title)

A. B., the above-named plaintiff, executor of the will of X. Y., deceased states as follows :—

1. That the defendant occupied the [house No. Street], by permission of the said X. Y., from the day of 19 , until the day of 19 , and no agreement was made as to payment for the use of the said premises.

2. That the use of the said premises for the said period was reasonably worth rupees.

3. The defendant has not paid the money.

[As in paras. 4 and 5 of Form No. 1.]

6. The plaintiff as executor of X. Y. claims [Relief claimed].

No. 10.

ON AN AWARD

(Title)

A. B., the above-named plaintiff, states as follows :—

1. On the day of 19 , the plaintiff and defendant, having a difference between them concerning [a demand of the plaintiff for the price of ten barrels of oil, which the defendant refused to pay], agreed in writing to submit the difference to the arbitration of E. F. and G. H., and the original document is annexed hereto.

2. On the day of 19 , the arbitrators awarded that the defendant should [pay the plaintiff rupees].

3. The defendant has not paid the money

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 11.

ON A FOREIGN JUDGMENT.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. On the day of 19 , at in the State [or Kingdom], of , the Court of that

State [*or Kingdom*], in a suit therein pending between the plaintiff and the defendant, duly adjudged that the defendant should pay to the plaintiff rupees, with interest from the said date

2. The defendant has not paid the money.

[*As in paras. 4 and 5 of Form No. 1, and Relief claimed.*]

No. 12.

AGAINST SURETY FOR PAYMENT OF RENT.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. On the day of 19 , E. F. hired from the plaintiff for the term of years, the [house No. , Street], at the annual rent of rupees, payable [monthly].

2 The defendant agreed, in consideration of the letting of the premises to E. F., to guarantee the punctual payment of the rent.

3. The rent for the month of 19 , amounting to rupees, has not been paid.

[*If, by the terms of the agreement, notice is required to be given to the surety, add :—*]

4. On the day of 19 , the plaintiff gave notice to the defendant of the non-payment of the rent, and demanded payment thereof.

5. The defendant has not paid the same.

[*As in paras. 4 and 5 of Form No. 1, and Relief claimed.*]

No. 13.

BREACH OF AGREEMENT TO PURCHASE LAND.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. On the day of 19 , the plaintiff and defendant entered into an agreement, and the original document is hereto annexed.

[*Or, On the day of 19 , the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant and that the defendant should purchase from the plaintiff forty bighas of land in the village of for rupees.*]

2. On the day of 19 , the plaintiff being then the absolute owner of the property [and the same being free from all incumbrances as was made to appear to the defendant], tendered to the defendant a sufficient instrument of transfer of the same [*or, was ready and willing, and is still ready and willing, and offered, to transfer the*

same to the defendant by a sufficient instrument] on the payment by the defendant of the sum agreed upon.

3. The defendant has not paid the money.

[As in paras. 4 and 5 of Form No 1, and Relief claimed.]

No. 14.

NOT DELIVERING GOODS SOLD.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. On the day of 19 , the plaintiff and defendant mutually agreed that the defendant should deliver [one hundred barrels of flour] to the plaintiff on the day of 19], and that the plaintiff should pay therefor rupees on delivery.

2. On the [said] day the plaintiff was ready and willing, and offered, to pay the defendant the said sum upon delivery of the goods.

3. The defendant has not delivered the goods, and the plaintiff has been deprived of the profits which would have accrued to him from such delivery.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 15.

WRONGFUL DISMISSAL.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. On the day of 19 , the plaintiff and defendant mutually agreed that the plaintiff should serve the defendant as [an accountant, or in the capacity of foreman, or as the case may be], and that the defendant should employ the plaintiff as such for the term of [one year] and pay him for his services rupees (monthly).

2. On the day of 19 , the plaintiff entered upon the service of the defendant and has ever since been, and still is, ready and willing to continue in such service during the remainder of the said year whereof the defendant always has had notice.

3. On the day of 19 , the defendant wrongfully discharged the plaintiff, and refused to permit him to serve as aforesaid, or to pay him for his services.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 16.

BREACH OF CONTRACT TO SERVE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. On the day of 19 , the plaintiff and defendant mutually agreed that the plaintiff should employ the defendant at an

[Or, 2 In consideration thereof, on the same date the defendant executed a bond in favour of the plaintiff, and the original document is hereto annexed.]

3. Between the day of 19 and the day of 19
E. F. received money and other property amounting to the value of
rupees for the use of the plaintiff, for which sum he has
not accounted to him, and the same still remains due and unpaid.]

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 19.

BY TENANT AGAINST LANDLORD, WITH SPECIAL DAMAGE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 the defendant, by a registered instrument, let to the plaintiff [the house No , Street] for the term of years, contracting with the plaintiff, that he, the plaintiff, and his legal representatives should quietly enjoy possession thereof for the said term.

2. All conditions were fulfilled and all things happened necessary to entitle the plaintiff to maintain his suit.

3. On the day of during the said term, E. F., who was the lawful owner of the said house, lawfully evicted the plaintiff therefrom, and still withholds the possession thereof from him.

4. The plaintiff was thereby [prevented from continuing the business of a tailor at the said place, was compelled to expend rupees in moving, and lost the custom of G. H. and I. J. by such removal.]

[As in paras. 4 and 5 of Form No. 1 and Relief claimed.]

No. 20.

ON AN AGREEMENT OF INDEMNITY.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the plaintiff and defendant, being partners in trade under the style of A. B. and C. D., dissolved the partnership, and mutually agreed that the defendant should take and keep all the partnership property, pay all debts of the firm and indemnify the plaintiff against all claims that might be made upon him on account of any indebtedness of the firm.

2. The plaintiff duly performed all the conditions of the agreement on his part.

3. On the day 19 , [a judgment was recovered against the plaintiff and defendant by E. F. in the High Court of judi.

[Civ. P. C.—15.]

ature at _____, upon a debt due from the firm to *E. F.*, and on the day of 19 _____ the plaintiff paid _____ rupees [in satisfaction of the same.]

4. The defendant has not paid the same to the plaintiff.

[*As in paras. 4 and 5 of Form No. 1, and Relief claimed.*]

No. 21.

PROCURING PROPERTY BY FRAUD.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. On the _____ day of _____ 19 _____, the defendant, for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he the defendant, was solvent, and worth _____ rupees over all his liabilities.]

2. The plaintiff was thereby induced to sell [and deliver] to the defendant, dry goods] of the value of _____ rupees.

3. The said representations were false [*or state the particular falsehoods*] and were then known by the defendant to be so.

4. The defendant has not paid for the goods. [*Or, if the goods were not delivered*]. The plaintiff, in preparing and shipping the goods and procuring their restoration, expended _____ rupees.

[*As in paras. 4 and 5 of Form No. 1 and Relief claimed.*]

No. 22.

FRAUDULENTLY PROCURING CREDIT TO BE GIVEN TO ANOTHER PERSON.

(Title).

A. B., the above-named plaintiff, states as follows :—

1. On the _____ day of _____ 19 _____, the defendant represented to the plaintiff that *E. F.* was solvent and in good credit, and worth _____ rupees over all his liabilities [*or, that E. F. then held a responsible situation and was in good circumstances, and might safely be trusted with goods on credit.*]

2. The plaintiff was thereby induced to sell to *E. F.* [rice] of the value _____ rupees [on _____ months credit.]

3. The said representations were false and were then known by the defendant to be so, and were made by him with intent to deceive and defraud the plaintiff [*or, to deceive and injure the plaintiff.*]

4. *E. F.* [did not pay for the said goods at the expiration of the credit aforesaid, *or*] has not paid for the said rice, and the plaintiff has wholly lost the same.

[*As in paras. 4 and 5 of Form No. 1 and Relief claimed.*]

No. 23.

POLLUTING THE WATER UNDER THE PLAINTIFF'S LAND.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. The plaintiff is, and at all the times hereinafter mentioned was, possessed of certain land called _____ and situate in _____, and of a well therein, and of water in the well, and was entitled to the use and benefit of the well and of the water therein, and to have certain springs and streams of water which flowed and ran into the well to supply the same to flow, or run without being fouled or polluted.

2 On the _____ day of _____ 19____, the defendant wrongfully fouled and polluted the well and the water therein and the springs and streams of water which flowed into the well.

3 In consequence the water in the well became impure and unfit for domestic and other necessary purposes and the plaintiff and his family are deprived of the use and benefit of the well and water.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 24.

CARRYING ON A NOXIOUS MANUFACTURE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. The plaintiff is, and at all the times hereinafter mentioned was, possessed of certain lands called _____, situate in _____.

2 Ever since the _____ day of _____ 19____, the defendant has wrongfully caused to issue from certain smelting works carried on by the defendant large quantities of offensive and unwholesome smoke and other vapours and noxious matter, which spread themselves over and upon the said lands, and corrupted the air, and settled on the surface of the lands.

3 Thereby the trees, hedges, herbage and crops of the plaintiff growing on the lands were damaged and deteriorated in value, and the cattle and live-stock of the plaintiff on the lands became unhealthy, and many of them were poisoned and died.

4. The plaintiff was unable to graze the lands with cattle and sheep as he otherwise might have done, and was obliged to remove his cattle, sheep and farming-stock therefrom, and has been prevented from having so beneficial and healthy a use and occupation of the lands as he otherwise would have had.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 25.

OBSTRUCTING A RIGHT OF WAY.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is, and at the time hereinafter mentioned was, possessed of [a house in the village of].

2. He was entitled to a right of way from the [house] over a certain field to a public highway and back again from the highway over the field to the house, for himself and his servants [with vehicles, or on foot] at all times of the year.

3. On the day of 19 , defendant wrongfully obstructed the said way, so that the plaintiff could not pass [with vehicles, or on foot, or in any manner] along the way [and has ever since wrongfully obstructed the same].

4. (*State special damage if any*).

[*As in paras. 4 and 5 of Form No. 1, and Relief claimed.*]

No. 26.

OBSTRUCTING A HIGHWAY.

(Title.)

1. The defendant wrongfully dug a trench and heaped up earth and stones in the public highway leading from to so as to obstruct it.

2. Thereby the plaintiff, while lawfully passing along the said highway, fell over the said earth and stones [or into the said trench] and broke his arm, and suffered great pain, and was prevented from attending to his business for a long time, and incurred expense for medical attendance.

[*As in paras. 4 and 5 of Form No. 1, and Relief claimed.*]

No. 27.

DIVERTING A WATER-COURSE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is, and at the time hereinafter mentioned was, possessed of a mill situated on a [stream] known as the , in the village of , district of .

2. By reason of such possession the plaintiff was entitled to the flow of the stream for working the mill.

3. On the day of 19 , the defendant, by cutting the bank of the stream, wrongfully diverted the water thereof, so that less water ran into the plaintiff's mill.

4. By reason thereof the plaintiff has been unable to grind more than _____ sacks per day, whereas, before the said diversion of water, he was able to grind _____ sacks per day.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 28.

OBSTRUCTING A RIGHT TO USE WATER FOR IRRIGATION.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. Plaintiff is, and was at the time hereinafter mentioned, possessed of certain lands situate, etc., and entitled to take and use a portion of the water of a certain stream for irrigating the said lands.

2. On the _____ day of _____, 19____, the defendant prevented the plaintiff from taking and using the said portion of the said water as aforesaid, by wrongfully obstructing and diverting the said stream.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 29.

INJURIES CAUSED BY NEGLIGENCE ON A RAILROAD.

(Title.)

A. B., the above named plaintiff, states as follows:—

1. On the _____ day of _____, 19____, the defendants were common carriers of passengers by railway between _____ and _____.

2. On that day the plaintiff was a passenger in one of the carriages of the defendants on the said railway.

3. While he was such passenger, at _____ [or near the station of _____ or between the station of _____ and _____], a collision occurred on the said railway, caused by the negligence and unskilfulness of the defendant's servants, whereby the plaintiff was much injured [having his leg broken, his head cut, etc., and state the special damage, if any, as], and incurred expense for medical attendance, and is permanently disabled from carrying on his former business as [a salesman].

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

Or thus:—2. On that day the defendants by their servants so negligently and unskilfully drove and managed an engine and a train of carriages attached thereto upon and along the defendants' railway which the plaintiff was then lawfully crossing, that the said engine and train were driven and struck against the plaintiff, whereby, etc., as in para. 3.

No. 30.

INJURIES CAUSED BY NEGLIGENT DRIVING.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. The plaintiff is a shoe-maker, carrying on business at . The defendant is a merchant of .

2. On the day of , 19 , the plaintiff was walking southward along Chowringhee, in the City of Calcutta, at about 3 o'clock in the afternoon. He was obliged to cross Middleton Street, which is a street running into Chowringhee at right angles. While he was crossing this street, and just before he could reach the foot pavement on the further side thereof, a carriage of the defendant's, drawn by two horses under the charge and control of the defendant's servants, was negligently, suddenly, and without any warning turned at a rapid and dangerous pace out of Middleton Street into Chowringhee. The pole of the carriage struck the plaintiff and knocked him down, and he was much trampled by the horses.

3. By the blow and fall and trampling the plaintiff's left arm was broken and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

[As in paras 4 and 5 of Form No. 1, and Relief claimed.]

No. 31.

FOR MALICIOUS PROSECUTION.

(Title)

A. B., the above-named plaintiff, states as follows .—

1. On the day of 19 , the defendant obtained a warrant of arrest from [a Magistrate of the said city, or as the case may be] on a charge of , and the plaintiff was arrested thereon, and imprisoned for [days, or hours, and gave bail in the sum of rupees to obtain his release].

2. In so doing the defendant acted maliciously and without reasonable or probable cause.

3. On the day of 19 , the Magistrate dismissed the complaint of the defendant and acquitted the plaintiff.

4. Many persons, whose names are unknown to the plaintiff, hearing of the arrest, and supposing the plaintiff to be a criminal, have ceased to do business with him; or, in consequence of the said arrest, the plaintiff lost his situation as clerk to one E. F.; or in consequence the plaintiff suffered pain of body and mind, and was prevented from transacting his business, and was injured in his credit, and incurred expense in obtaining his release from the said imprisonment and in defending himself against the said complaint.

[As in paras 4 and 5 of Form No. 1, and Relief claimed.]

No. 32.

MOVEABLES WRONGFULLY DETAINED.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , plaintiff] owned [*or state facts showing a right to the possession*] the goods mentioned in the schedule hereto annexed [*or describe the goods*], the estimated value of which is rupees.

2. From that day until the commencement of this suit the defendant has detained the same from the plaintiff.

3. Before the commencement of the suit, to wit on the day of 19 the plaintiff demanded the same from the defendant, but he refused to deliver them.

[*As in paras. 4 and 5 of Form No. 1.*]

6. The plaintiff claims—

- (1) delivery of the said goods, or rupees, in case delivery cannot be had ;
- (2) rupees compensation for the detention thereof.

The Schedule.

No. 33.

AGAINST A FRAUDULENT PURCHASER AND HIS TRANSFERRE WITH NOTICE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the defendant (*C. D.*, for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he was solvent, and worth rupees over all his liabilities].

2. The plaintiff was hereby induced to sell and deliver to *C. D.* [one hundred boxes of tea], the estimated value of which is rupees.

3. The said representations were false, and were then known by *C. D.* to be so, [*or*, at the time of making the said representations, *C. D.* was insolvent, and knew himself to be so].

4. *C. D.* afterwards transferred the said goods to the defendant *E. F.* without consideration [*or* who had notice of the falsity of the representation].

[*As in paras. 4 and 5 of Form No. 1.*]

7. The plaintiff claims—

- (1) delivery of the said goods, or rupees, in case delivery cannot be had ;
- (2) rupees compensation for the detention thereof.

No. 34.

RESCISSION OF A CONTRACT ON THE GROUND OF MISTAKE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the defendant represented the plaintiff that a certain piece of ground belonging to the defendant, situated at , contained [ten bighas].
2. The plaintiff was thereby induced to purchase the same at the price of rupees in the belief that the said representation was true, and signed an agreement, of which the original is hereto annexed. But the land has not been transferred to him.
3. On the day of 19 , the plaintiff paid the defendant rupees as part of the purchase-money.
4. That the said piece of ground contained in fact only [five bighas].
[*As in paras. 4 and 5 of Form No. 1.*]
7. The plaintiff claims—
 - (1) rupees, with interest from the day of 19 ,
 - (2) that the said agreement be delivered up and cancelled.

No. 35.

AN INJUNCTION RESTRAINING WASTE.

(Title.)

A. B., the above-named plaintiff, states as follows —

1. The plaintiff is the absolute owner of [*describe the property*].
2. The defendant is in possession of the same under a lease from the plaintiff.
3. The defendant has [cut down a number of valuable trees, and threatens to cut down many more for the purpose of sale] without the consent of the plaintiff.

[*As in paras. 4 and 5 of Form No. 1.*]

6. The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.

[*Pecuniary compensation may also be claimed*]

No. 36.

INJUNCTION RESTRAINING NUISANCE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. Plaintiff is, and at all the times hereinafter mentioned was, the absolute owner of [the house No. Street, Calcutta].

2. The defendant is, and at all the said times was, the absolute owner of [a plot of ground in the same street].

3. On the day of 19 , the defendant erected upon his said plot a slaughter-house, and still maintains the same; and from that day until the present time has continually caused cattle to be brought and killed there [and has caused the blood and offal to be thrown into the street opposite the said house of the plaintiff]

4. In consequence the plaintiff has been compelled to abandon the said house and has been unable to rent the same.

[As in paras. 4 and 5 of Form No. 1]

The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further nuisance.

No. 37.

PUBLIC NUISANCE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. The defendant has wrongly heaped up earth and stones on a public road known as Street at so as to obstruct the passage of the public along the same and threatens and intends, unless restrained from so doing, to continue and repeat the said wrongful act.

2. The plaintiff have obtained the consent in writing of the Advocate-General [or of the Collector or other officer appointed in this behalf] to the institution of this suit.

[As in paras. 4 and 5 of Form No. 1]

The plaintiff claims—

- (1) a declaration that the defendant is not entitled to obstruct the passage of the public along the said public road;
- (2) an injunction restraining the defendant from obstructing the passage of the public along the said public road and directing the defendant to remove the earth and stones wrongfully heaped up as aforesaid.

No. 38.

INJUNCTION AGAINST THE DIVERSION OF A WATER-COURSE.

(Title.)

A. B., the above-named plaintiff, states as follows:

[As in Form No. 27.]

The plaintiff claims that the defendant be restrained by injunction from diverting the water as aforesaid.

No. 39.

**RESTORATION OF MOVEABLE PROPERTY THREATENED WITH DESTRUCTION
AND FOR AN INJUNCTION.**

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. Plaintiff is, and at all times hereinafter mentioned was, the owner of [a portrait of his grandfather which was executed by an eminent painter], and of which no duplicate exists [*or, state any facts showing that the property is of a kind that cannot be replaced by money*].

2. On the _____ day of _____ 19____, he deposited the same for safe keeping with the defendant.

3. On the _____ day of _____ 19____, he demanded the same from the defendant and offered to pay all reasonable charges for the storage of the same.

4. The defendant refuses to deliver the same to the plaintiff and threatens to conceal, dispose of, cut or injure the same if required to deliver it up.

5. No pecuniary compensation would be an adequate compensation to the plaintiff for the loss of the [painting].

[As in paras. 4 and 5 of Form No. 1.]

8. The plaintiff claims—

(1) that the defendant be restrained by injunction from disposing of injuring or concealing the said painting

(2) that he be compelled to deliver the same to the plaintiff.

No. 40.

INTERPLEADER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. Before the date of the claims hereinafter mentioned *G. H.* deposited with the plaintiff [*describe the property*] for [safe-keeping].

2. The defendant *C. D.* claims the same [under an alleged assignment thereof to him from *G. H.*].

3. The defendant *E. F.* also claims the same [under an order of *G. H.* transferring the same to him].

4. The plaintiff is ignorant of the respective rights of the defendants.

5. He has no claim upon the said property other than for charges and costs, and is ready and willing to deliver it to such persons as the Court shall direct.

6. The suit is not brought by collusion with either of the defendants.

[As in paras. 4 and 5 of Form No. 1.]

9. The plaintiff claims—

- (1) that the defendants be restrained, by injunction, from taking any proceedings against the plaintiff in relation thereto ;
- (2) that they be required to interplead together concerning their claims to the said property ;
- [(3) that some person be authorized to receive the said property pending such litigation ;]
- (4) that upon delivering the same to such [person] the plaintiff be discharged from all liability to either of the defendants in relation thereto.

 No. 41.

 ADMINISTRATION BY CREDITOR ON BEHALF OF HIMSELF AND ALL OTHER CREDITORS.
 (Title)

A. B, the above-named plaintiff, states as follows :

1. E F, late of _____, was at the time of his death, and his estate still is, indebted to the plaintiff in the sum of _____ [here insert nature of debt and security if any].

2 E. F. died on or about the _____ day of _____. By his last will, dated the _____ day of _____, he appointed C. D his executor [or devised his estate in trust, etc, or died intestate, as the case may be].

3 The will was proved by C. D. [or letters of administration were granted, etc.].

4. The defendant has possessed himself of the moveable [and immoveable, or the proceeds of the immoveable] property of E. F., and has not paid the plaintiff his debt.

[As in paras. 4 and 5 of Form No. 1.]

7. The plaintiff claims that an account may be taken of the moveable [and immoveable] property of E. F., deceased, and that the same may be administered under the decree of the Court.

 No. 42.

 ADMINISTRATION BY SPECIFIC LEGATEE.
 (Title.)

[Alter Form No. 41 thus]—

[Omit paragraph 1 and commence paragraph 2] E. F., late of _____, died on or about the _____ day of _____.

By his last will, dated the _____ day of _____, he appointed C. D his executor, and bequeathed to the plaintiff [here state the specific legacy].

For paragraph 4 substitute—

The defendant is in possession of the moveable property of *E. F.*, and, amongst other things, of the said [*here name the subject of the specific bequest*].

For the commencement of paragraph 7 substitute—

The plaintiff claims that the defendant may be ordered to deliver to him the said [*here name the subject of the specific bequest*], or that, etc.

— — —
No. 43.

ADMINISTRATION BY PECUNIARY LEGATEE.

(Title.)

[*Alter Form No. 41 thus—*

[*Omit paragraph 1 and substitute for paragraph 2*] *E. F.*, late of
, died on or about the day of .
By his last will, dated the day of he ap-
pointed *C. D.* his executor, and bequeathed to the plaintiff a legacy of
rupees.

In paragraph 4 substitute "legacy" for "debt."
Another form.

(Title.)

E. F., the above-named plaintiff, states as follows :

1. *A. B.* of *K.* in the died on the day of .
By his last will dated the day of , he appointed the defend-
ant and *M. N.* [who died in the testator's lifetime his executors, and
bequeathed his property, whether moveable or immoveable, to his executors
in trust, to pay the rents and income thereof to the plaintiff for his life, and
after his decease, and in default of his having a son who should attain
twenty-one, or a daughter who should attain that age or marry, upon trust
as to his immoveable property for the person who would be the testator's
heir-at-law, and as to his moveable property for the persons who would be
the testator's next-of-kin if he had died intestate at the time of the death of
the plaintiff, and such failure of his issue as aforesaid.

2. The will was proved by the defendant on the day of .
The plaintiff has not been married.

3. The testator was at his death entitled to moveable and immoveable
property; the defendant entered into the receipt of the rents of the immove-
able property and got in the moveable property, he has sold some part of
the immoveable property.

[*As in paras. 4 and 5 of Form No. 1.*]

6. The plaintiff claims—

- (1) to have the moveable and immoveable property of *A. B.* adminis-
tered in this Court, and for that purpose to have all proper
directions given and accounts taken;
- (2) such further or other relief as the nature of the case may require.

No. 44.

EXECUTION OF TRUSTS

(Title)

A. B., the above-named plaintiff, states as follows :

1. He is one of the trustees under an instrument of settlement bearing date on or about the _____ day of _____ made upon the marriage of *E. F.* and *G. H.*, the father and mother of the defendant [or an instrument of transfer of the estate and effects of *E. F.* for the benefit of *C. D.*, the defendant, and the other creditors of *E. F.*]

2. *A. B.*, has taken upon himself the burden of the said trust, and is in possession of [or of the proceeds of] the moveable and immoveable property transferred by the said instrument.

3. *C. D.* claims to be entitled to a beneficial interest under the instrument.

[As in paras. 4 and 5 of Form No. 1]

6 The plaintiff is desirous to account for all the rents and profits or the said immoveable property [and the proceeds of the sale of the said, or of part of the said, immoveable property, or moveable, or the proceeds of the sale of, or of part of, the said moveable property, or the profits accruing to the plaintiff as such trustee in the execution of the said trust], and he prays that the Court will take the accounts of the said trust, and also that the whole of the said trust estate may be administered in the Court for the benefit of *C. D.*, the defendant, and all other persons who may be interested in such administration, in the presence of *C. D.*, and such other persons so interested as the Court may direct, or that *C. D.* may show good cause to the contrary.

[*N. B.*—Where the suit is by a beneficiary, the plaint may be modelled, "*mutatis mutandis*," on the plaint by a legatee.]

No. 45.

FORECLOSURE OR SALE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. The plaintiff is mortgagee of lands belonging to the defendant.
2. The following are the particulars of the mortgage :—

- (a) (date) ;
- (b) (names of mortgagor and mortgagee) ;
- (c) (sum secured) ;
- (d) (rate of interest) ;
- (e) (property subject to mortgage) ;
- (f) (amount now due).

(g) (if the plaintiff's title is derivative, state shortly the transfers or devolution under which he claims).

(If the plaintiff is mortgagee in possession, add).

3. The plaintiff took possession of the mortgaged property on the day of _____ and is ready to account as mortgagee in possession from that time.

[As in paras. 4 and 5 of Form No. 1.]

6. The plaintiff claims :—

(1) payment, or in default [sale or] foreclosure [and possession] ;

[Where Order 34, rule 6, applies.]

(2) in case the proceeds of the sale are found to be insufficient to pay the amount due to the plaintiff, then that liberty be reserved to the plaintiff to apply for a decree for the balance.

No. 46.

REDEMPTION.

(Title.)

A. B., the above named plaintiff, states as follows :—

1. The plaintiff is mortgagor of lands of which the defendant is mortgagee.

2. The following are the particulars of the mortgage :

(a) (date) :

(b) (names of mortgagor and mortgagee) ;

(c) (sum secured) ;

(d) (rate of interest) ;

(e) (property subject to mortgage) ;

(f) (if the plaintiff's title is derivative, state shortly the transfers or devolution under which he claims).

(If the defendant is mortgagee in possession, add).

3. The defendant has taken possession [or has received the rents] of the mortgaged property.

[As in paras. 4 and 5 of Form No. 1.]

6. The plaintiff claims to redeem the said property and to have the same reconveyed to him [and to have possession thereof].

No. 47.

SPECIFIC PERFORMANCE (No. 1).

(Title.)

A. B., the above-named plaintiff, states as follows —

1. By an agreement dated the _____ day of _____ and signed by the defendant, he contracted to buy of [or sell to] the plaintiff

certain immoveable property therein described and referred to, for the sum of rupees.

2. The plaintiff has applied to the defendant specifically to perform the agreement on his part, but the defendant has not done so.

3. The plaintiff has been and still is ready and willing specifically to perform the agreement on his part of which the defendant has had notice.

[As in paras. 4 and 5 of Form No. 1.]

6 The plaintiff claims that the Court will order the defendant specifically to perform the agreement and to do all acts necessary to put the plaintiff in full possession of the said property [or to accept a transfer and possession of the said property] and to pay the costs of the suit.

No 48.

SPECIFIC PERFORMANCE (NO. 2).

(Title.)

A B., the above-named plaintiff, states as follows :—

1. On the day of 19 , the plaintiff and defendant entered into an agreement, in writing, and the original document is hereto annexed

The defendant was absolutely entitled to the immoveable property described in the agreement.

2. On the day of 19 , the plaintiff tendered rupees to the defendant, and demanded a transfer of the said property by a sufficient instrument.

3. On the day of 19 , the plaintiff again demanded such transfer [or the defendant refused to transfer the same to the plaintiff.]

4. The defendant has not executed any instrument of transfer.

5 The plaintiff is still ready and willing to pay the purchase-money of the said property to the defendant.

[As in paras. 4 and 5 of Form No. 1.]

8. The plaintiff claims :—

(1) that the defendant transfers the said property to the plaintiff by a sufficient instrument *[following the terms of the agreement]* ;

(2) rupees compensation for withholding the same.

No. 49.

PARTNERSHIP.

(Title)

A. B., the above-named plaintiff, states as follows :—

1 He and C. D., the defendant, have been for _____ years
[or months] past carrying on business together under articles of partner-
ship in writing, [or under a deed, or under a verbal agreement].

2. Several disputes and differences have arisen between the plaintiff
and defendant as such partners whereby it has become impossible to carry
on the business in partnership with advantage to the partners. [Or the
defendant has committed the following breaches of the partnership
articles :—

1)

(2)

(3)]

[As in paras 4 and 5 of Form No. 1.]

5. The plaintiff claims :—

(1) dissolution of the partnership ,

(2) that accounts be taken :

(3) that a receiver be appointed.

(N. B.—In suits for the winding-up of any partnership, omit the
claim for dissolution : and instead insert a paragraph stating the facts of
the partnership having been dissolved.)

(4) WRITTEN STATEMENTS.

General defences.

Denial.

The defendant denies that (set out facts).

The defendant does not admit that (set out
facts).

The defendant admits that _____ but says that

Protest.

The defendant denies that he is a partner in
the defendant firm of _____

The defendant denies that he made the con-
tract alleged or any contract with the
plaintiff.

The defendant denies that he contracted with the plaintiff as alleged or at all.

The defendant admits assets, but not the plaintiff's claim.

The defendant denies that the plaintiff sold to him the goods mentioned in the plaint or any of them.

Limitation.

The suit is barred by article or article
of the second schedule to the Indian
Limitation Act, 1877.

Jurisdiction.

The Court has no jurisdiction to hear the
suit on the ground (*set forth the grounds*).

On the day of a diamond ring was delivered by) the
defendant to, and accepted by, the plaintiff in discharge of the alleged cause
of action.

Insolvency.

The defendant has been adjudged an
insolvent.

The plaintiff, before the institution of the suit, was adjudged an insolvent, and the right to sue vested in the receiver.

Minority.

The defendant was a minor at the time
of making the alleged contract.

The defendant, as to the whole claim (*or as to Rs. part of the*
money claimed, or as the case may be), has
Payment into Court. paid into Court Rs. and says that
this sum is enough to satisfy the plaintiff's claim (*or the part aforesaid*).

Performance remitted.

The performance of the promise alleged
was remitted on the (*date*).

Rescission.

The contract was rescinded by agree-
ment between the plaintiff and defendant.

Res judicata.

The plaintiff's claim is barred by the
decree in suit (*give the reference*).

The plaintiff is estopped from denying the truth of (*insert statement*
as to which estoppel is claimed) because (*here*
Estoppel. *state the facts relied on as creating the*
estoppel).

Ground of defence subsequent
to institution of suit.

Since the institution of the suit, that is
to say, on the day of (*set out facts*)

No. 1.

DEFENCE IN SUITS FOR GOODS SOLD AND DELIVERED.

1. The defendant did not order the goods.
2. The goods were not delivered to the defendant.
3. The price was not Rs.

[*or*]

4. } Except as to Rs.
5. }
6. }

, (*same as*) { 1.
2.
3.

7. The defendant [*or A. B., the defendant's agent*] satisfied the claim by payment before suit to the plaintiff [*or to C. D., the plaintiff's agent*] on the day of 19 .

8. The defendant satisfied the claim by payment after suit to the plaintiff, on the day of 19 .

No. 2.

DEFENCE IN SUITS ON BONDS.

1. The bond is not the defendant's bond.
2. The defendant made payment to the plaintiff on the day according to the condition of the bond.
3. The defendant made payment to the plaintiff after the day named and before suit of the principal and interest mentioned in the bond.

No. 3.

DEFENCE IN SUITS ON GUARANTEES.

1. The principal satisfied the claim by payment before suit.
2. The defendant was released by the plaintiff giving time to the principal debtor in pursuance of a binding agreement.

No. 4.

DEFENCE IN ANY SUIT FOR DEBT.

1. As to Rs. 200 of the money claimed, the defendant is entitled to set off for goods sold and delivered by the defendant to the plaintiff.

Particulars are as follow :—

	Rs.
1907, January 25th	150
„ February 1st	50
Total	200

2. As to the whole [*or as to Rs.*], part of the money claimed] the defendant made tender before suit of Rs. , and has paid the same into Court.

No. 5.

DEFENCE IN SUITS FOR INJURIES CAUSED BY NEGLIGENT DRIVING.

1. The defendant denies that the carriage mentioned in the plaint was the defendant's carriage, and that it was under the charge or control of the defendant's servants. The carriage belonged to of Street, Calcutta, livery stable keepers employed by the defendant to supply him with carriages and horses; and the person under whose charge and control the said carriage was was the servant of the said .

2. The defendant does not admit that the said carriage was turned out of Middleton Street, either negligently, suddenly, or without warning, or at a rapid or dangerous pace.

3. The defendant says the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the said carriage approaching him, and avoided any collision with it.

4. The defendant does not admit the statements contained in the third paragraph of the plaint.

No. 6.

DEFENCE IN ALL SUITS FOR WRONGS.

1. Denial of the several acts [*or matters*] complained of.
-

No. 7.

DEFENCE IN SUITS FOR DETENTION OF GOODS.

1. The goods were not the property of the plaintiff.
2. The goods were detained for a lien to which the defendant was entitled.

Particulars are as follow :—

1907, May 3rd. To carriage of the goods claimed from Delhi to Calcutta :—

45 maunds at Rs. 2 per maund Rs. 90

No. 8.

DEFENCE IN SUITS FOR INFRINGEMENT OF COPYRIGHT.

1. The plaintiff is not the author [*assignee, etc.*].
2. The book was not registered.
3. The defendant did not infringe.

No. 9.

DEFENCE IN SUITS FOR INFRINGEMENT OF TRADE MARK.

1. The trade mark is not the plaintiff's.
 2. The alleged trade mark is not a trade mark.
 3. The defendant did not infringe.
-

No. 10.

DEFENCE IN SUITS RELATING TO NUISANCES.

1. The plaintiff's lights are not ancient [*or deny his other alleged prescriptive rights*].

2. The plaintiff's lights will not be materially interfered with by the defendant's buildings.

3. The defendant denies that he or his servants pollute the water [or do what is complained of].

[If the defendant claims the right by prescription or otherwise to do what is complained of, he must say so, and must state the grounds of the claim, i. e., whether by prescription, grant, or what.]

4. The plaintiff has been guilty of laches of which the following are particulars:—

1870. Plaintiff's mill began to work.

1871. Plaintiff came into possession.

1883. First complaint.

5. As to the plaintiff's claim for damages, the defendant will rely on the above grounds of defence, and says that the acts complained of have not produced any damage to the plaintiff. [If other grounds are relied on, they must be stated, e. g., limitation as to past damage.]

No. 11.

DEFENCE TO SUIT FOR FORECLOSURE.

1. The defendant did not execute the mortgage.

2. The mortgage was not transferred to the plaintiff (if more than one transfer is alleged, say which is denied).

3. The suit is barred by article _____ of the second schedule to the Indian Limitation Act, 1877.

4. The following payments have been made, viz. :—

						Rs.
(Insert date.)	_____	...	...	...	...	1,000
(Insert date.)	_____	...	...	...	...	500

5. The plaintiff took possession on the _____ of _____, and has received the rents ever since.

6. That plaintiff released the debt on the _____ of _____.

7. The defendant transferred all his interest to A. B. by a document dated _____

No. 12.

DEFENCE TO SUIT FOR REDEMPTION.

1. The plaintiff's right to redeem is barred by article _____ of the second schedule to the Indian Limitation Act, 1877.

2. The plaintiff transferred all his interest in the property to A. B.

3. The defendant by a document dated the _____ day of _____ transferred all his interest in the mortgage-debt and property comprised in the mortgage to A. B.

4. The defendant never took possession of the mortgaged property, or received the rents thereof.

(If the defendant admits possession for a time only, he should state the time, and deny possession beyond what he admits.)

No. 13.

DEFENCE TO SUIT FOR SPECIFIC PERFORMANCE.

1. The defendant did not enter into the agreement.
2. A. B. was not the agent of the defendant *(if alleged by plaintiff)*.
3. The plaintiff has not performed the following conditions—*(conditions)*.
4. The defendant did not—*(alleged acts of part performance)*.
5. The plaintiff's title to the property agreed to be sold is not such as the defendant is bound to accept by reasons of the following matter—*(State why)*.
6. The agreement is uncertain in the following respects—*(State them)*.
7. *(or)* The plaintiff has been guilty of delay ;
8. *(or)* The plaintiff has been guilty of fraud *(or misrepresentation)*.
9. *(or)* The agreement is unfair ,
10. *(or)* The agreement was entered into by mistake,
11. The following are particulars of (7), (8), (9), (10), *(or as the case may be)*.
12. The agreement was rescinded under Conditions of Sale, No. 11 *(or by mutual agreement)*.

In cases where damages are claimed and the defendant disputes his liability to damages, he must deny the agreement or the alleged breaches, or show whatever other ground of defence he intends to rely on, e. g., the Indian Limitation Act, accord and satisfaction, release, fraud, etc.)

No. 14.

DEFENCE IN ADMINISTRATION-SUIT BY PECUNIARY LEGATEE.

1. A. B.'s will contained a charge of debts; he died insolvent; he was entitled at his death to some immoveable property which the defendant sold, and which produced the net sum of Rs. , and the testator had some moveable property which the defendant got in, and which produced the net sum of Rs.

2. The defendant applied the whole of the said sums and the sum of Rs. which the defendant received from rents of the immoveable property in the payment of the funeral and testamentary expenses and some of the debts of the testator.

3. The defendant made up his accounts and sent a copy thereof to the plaintiff on the day of 19 , and offered the plain-

tiff free access to the vouchers to verify such accounts, but he declined to avail himself of the defendant's offer.

4. The defendant submits that the plaintiff ought to pay the costs of this suit.

No. 15.

PROBATE OF WILL IN SOLEMN FORM.

1. The said will and codicil of the deceased were not duly executed according to the provisions of the Indian Succession Act, 1865 [*or of the Hindu Wills Act, 1870*].

2. The deceased, at the time the said will and codicil respectively purport to have been executed, was not of sound mind, memory, and understanding.

3. The execution of the said will and codicil was obtained by the undue influence of the plaintiff [and others acting with him whose names are at present unknown to the defendant].

4. The execution of the said will and codicil was obtained by the fraud of the plaintiff, such fraud, so far as is within the defendant's present knowledge, being [*state the nature of the fraud*].

5. The deceased, at the time of the execution of the said will and codicil, did not know and approve of the contents thereof [*or of the contents of the residuary clause in the said will, as the case may be*].

6. The deceased made his true last will, dated the 1st January 1873, and thereby appointed the defendant sole executor thereof.

The defendant claims :—

(1) that the Court will pronounce against the said will and codicil propounded by the plaintiff :

(2) that the Court will decree probate of the will of the deceased, dated the first January 1873, in solemn form of law.

No. 16.

PARTICULARS. (O. 6, r. 5.)

(*Title of suit.*)

The following are the particulars of (*here state the matters in respect of which particulars have been ordered*) delivered pursuant to the order of the of
 Particulars.
 (*Here set out the particulars ordered in paragraphs if necessary*),

APPENDIX B.

PROCESS.

No. 1.

SUMMONS FOR DISPOSAL OF SUIT. (O. 5, rr. 1, 5.)

(Title)

To

[Name, description, and place of residence.]

WHEREAS

has instituted a suit against you for
 you are hereby summoned to appear in this Court in person or by a pleader
 duly instructed, and able to answer all material questions relating to the
 suit, or who shall be accompanied by some person able to answer all such
 questions, on the day of 19 ,
 at o'clock in the noon, to answer the claim; and, as the day
 fixed for your appearance is appointed for the final disposal of the suit, you
 must be prepared to produce on that day all the witnesses upon whose
 evidence, and all the documents upon which, you intend to rely in support
 of your defence.

Take notice that, in default of your appearance on the day before
 mentioned, the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this
 day of 19 .

Judge.

NOTICE.—1. Should you apprehend your witnesses will not attend of
 their own accord, you can have a summons from this Court
 to compel the attendance of any witness and the produc-
 tion of any document that you have a right to call upon
 the witness to produce, on applying to the Court, and on
 depositing the necessary expenses.

2. If you admit the claim, you should pay the money into Court,
 together with the costs of the suit, to avoid execution of
 the decree, which may be against your person or property,
 or both.

No. 2

SUMMONS FOR SETTLEMENT OF ISSUES. (O. 5, rr. 1, 5.)

(Title.)

To

[Name, description, and place of residence.]

WHEREAS

has instituted a suit against you for
 , you are hereby summoned to appear in this Court
 in person, or by a pleader duly instructed, and able to answer all material
 questions relating to the suit, or who shall be accompanied by some

person able to answer all such questions, on the _____ day of _____, 19____, at _____ o'clock in the _____ noon, to answer the claim; and you are directed to produce on that day all the documents upon which you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this _____ day of _____ 19____.

Judge.

NOTICE.—1. Should you apprehend your witnesses will not attend of their own accord, you can have a summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call on the witness to produce, on applying to the Court, and on depositing the necessary expenses.

2. If you admit the claim, you should pay the money into Court, together with the costs of the suit, to avoid execution of the decree, which may be against your person or property or both.

No. 3.

SUMMONS TO APPEAR IN PERSON. (O. 5, r. 3.)

(Title.)

To

[Name, description, and place of residence.]

WHEREAS _____ has instituted a suit against you for _____, you are hereby summoned to appear in this Court in person on the _____ day of _____ 19____, at _____ o'clock in the _____ noon, to answer the claim; and you are directed to produce on that day all the documents upon which you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this _____ day of _____ 19____.

Judge.

No. 4.

SUMMONS IN SUMMARY SUIT ON NEGOTIBLE INSTRUMENT. (O. 37, r. 2.)

(Title.)

To

[Name, description, and place of residence.]

WHEREAS _____ has instituted a suit against you under Order XXXVII. of the Code of Civil Procedure, 1908, for Rs. _____, balance _____, balance _____.

of principal and interest due to him as the _____ of a _____ of which a copy is hereto annexed, you are hereby summoned to obtain leave from the Court within ten days from the service hereof to appear and defend the suit, and within such time to cause an appearance to be entered for you. In default whereof the plaintiff will be entitled, at any time after the expiration of such ten days, to obtain a decree for any sum not exceeding the sum of Rs. _____ and the sum of Rs. _____ for costs.

Leave to appear may be obtained on an application to the Court supported by affidavit or declaration showing that there is a defence to the suit on the merits, or that it is reasonable that you should be allowed to appear in the suit.

GIVEN under my hand and the seal of the Court, this
day of _____ 19 ____.

Judge.

No. 5.

NOTICE TO PERSON WHO, THE COURT CONSIDERS, SHOULD BE ADDED AS
CO-PLAINTIFF. (O. 1, r. 10.)

(Title.)

To

[Name, description, and place of residence.]

WHEREAS _____ has instituted the above suit against _____ for _____ and whereas it appears necessary that you should be added as a plaintiff in the said suit in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved:

Take notice that you should on or before _____ day of
19 ____ signify to this Court whether you consent to be so added.

GIVEN under my hand and the seal of the Court, this
day of _____ 19 ____.

Judge.

No. 6.

SUMMONS TO LEGAL REPRESENTATIVE OF A DECEASED DEFENDANT.

(O. 22, r. 4.)

(Title.)

To

WHEREAS the plaintiff _____ instituted a suit in this Court on the _____ day of _____ 19 ____ against the defendant _____ who has since deceased, and whereas the said plaintiff has made an application to this Court alleging that you are the legal representative of the said deceased, and desiring that you be made the defendant in his stead:

You are hereby summoned to attend in this Court on the
day of _____ 19 ____ at _____ A. M. to defend the

said suit, and, in default of your appearance on the day specified, the said suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this
day of _____

19 .
Judge.

No. 7.

ORDER FOR TRANSMISSION OF SUMMONS FOR SERVICE IN THE JURISDICTION
OF ANOTHER COURT. (O. 5, r. 21.)

(Title.)

WHEREAS it is stated that

defendant
witness in the above suit is at present residing in
: It is ordered that a summons returnable on the
day of _____

19 , be forwarded to the

Court of _____ for service on the said defendant
witness with a
duplicate of this proceeding.

The court-fee of _____ chargeable in respect to the summons
has been realized in this Court in stamps.

Dated _____ 19 .

Judge.

No. 8.

ORDER FOR TRANSMISSION OF SUMMONS TO BE SERVED ON A PRISONER.
(O. 5, r. 24.)

(Title.)

To

The Superintendent of the Jail at _____ .

UNDER the provisions of Order V, rule 24, of the Code of Civil
Procedure, 1908, a summons in duplicate is herewith forwarded for service
on the defendant _____ who is
a prisoner in jail. You are requested to cause a copy of the said summons
to be served upon the said defendant, and to return the original to this Court
signed by the said defendant, with a statement of service endorsed thereon
by you

Judge.

No. 9.

ORDER FOR TRANSMISSION OF SUMMONS TO BE SERVED ON A PUBLIC
SERVANT OR SOLDIER. (O. 5, rr. 27, 28)

(Title.)

To

UNDER the provisions of Order V, rule 27 (or 28, as the case may be)
of the Code of Civil Procedure, 1908, a summons in duplicate is herewith

forwarded for service on the defendant who is stated to be serving under you. You are requested to cause a copy of the said summons to be served upon the said defendant, and to return the original to this Court signed by the said defendant, with a statement of service endorsed thereon by you.

Judge.

No. 10

TO ACCOMPANY RETURNS OF SUMMONS OF ANOTHER COURT. (O. 5, r. 23.)
(Title.)

Read proceeding from the forwarding
in Suit No. of 19 of that Court.

Read Serving Officer's endorsement stating that the
and proof of the above having been duly taken by me on the oath of
and it is ordered that the
be returned to the with a copy of this proceeding.

Judge.

NOTE.—This form will be applicable to process other than summons, the service of which may have to be effected in the same manner.

No. 11.

AFFIDAVIT OF PROCESS-SERVER TO ACCOMPANY RETURN OF A SUMMONS OR
NOTICE. (O. 5, r. 18)
(Title.)

The Affidavit of

son of

I

make oath
affirm

and say as follows—

(1) I am a process-server of this Court.

(2) On the day of 19

I received a $\frac{\text{summons}}{\text{notice}}$ issued by the Court of

in Suit No.

of 19 in the said Court, dated the day of

19 for service on

(3) The said

time personally known to me, and I served the said $\frac{\text{summons}}{\text{notice}}$ on $\frac{\text{him}}{\text{her}}$ on the day of 19 at about

o'clock in the noon at
by tendering a copy thereof to $\frac{\text{him}}{\text{her}}$ and requiring $\frac{\text{his}}{\text{her}}$ signature to the original $\frac{\text{summons}}{\text{notice}}$.

(a)

(b)

(a) Here state whether the person served signed or refused to sign the process, and in whose presence.

(b) Signature of process-server.

or,

(3) The said _____ not being personally known to me
 accompanied me to _____
 and pointed out to me a person whom he stated to be the said _____
 , and I served the said summons on ^{him} notice ^{her} on the
 day of _____ 19____, at about _____ o'clock in the
 noon at _____ by
 tendering a copy thereof to ^{him} her and requiring ^{his} her signature to the original

notice

(a)

(b)

(a) Here state whether the person served signed, or refused to sign, the process, and in whose presence.

(b) Signature of process-server.

or,

(3) The said _____ and the house in which he
 ordinarily resides being personally known to me, I went to the said house,
 in _____ and there, on the _____ day of
 19____, at about _____ o'clock in the
 noon, I did not find the said _____

(a)

(b)

(a) Enter fully and exactly the manner in which the process was served,
 with special reference to Order 5, rules 15 and 17.

(b) Signature of process-server.

or

(3) One _____ accompanied me to _____
 and there pointed out to me _____ which he
 said was the house in which _____ ordinarily resides. I did not find
 the said _____ there.

(a)

(b)

(a) Enter fully and exactly the manner in which the process was served,
 with special reference to Order 5, rules 15 and 17.

(b) Signature of process-server.

or,

If substituted service has been ordered, state fully and exactly the manner in which the summons was served with special reference to the terms of the order for substituted service.

Sworn
Affirmed by the said _____

before me this

day of _____ 19____.

Empowered under section 139 of the Code of Civil Procedure
 to administer the oath to deponents.

No. 12.

NOTICE TO DEFENDANT. (O. 9, r. 6.)

(Title.)

To

(Name, description, and place of residence.)

WHEREAS this day was fixed for the hearing of the above suit, and a summons was issued to you, and the plaintiff has appeared in this Court, and you did not so appear, but from the return of the Nazir it has been proved to the satisfaction of the Court that the said summons was served on you, but not in sufficient time to enable you to appear and answer on the day fixed in the said summons:

Notice is hereby given to you that the hearing of the suit is adjourned this day, and that the day of 19 is now fixed for the hearing of the same, in default of your appearance on the day last mentioned, the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this day of
19 .

Judge.

No. 13.

SUMMONS TO WITNESS. (O. 16, rr. 1, 5)

(Title.)

To

WHEREAS your attendance is required to
on behalf of the in the above suit, you are hereby required
[personally] to appear before this Court on the day of
19 , at o'clock in the forenoon, and to bring with you [or to
send to this Court]

A sum of Rs. , being your travelling and other expenses and subsistence allowance for one day, is herewith sent. If you fail to comply with this order without lawful excuse, you will be subject to the consequences of non-attendance laid down in rule 12 of Order XVI. of the Code of Civil Procedure.

GIVEN under my hand and the seal of the Court, this day
of 19 .

Judge.

NOTICE.—(1) If you are summoned only to produce a document, and not to give evidence, you shall be deemed to have complied with the summons if you cause such document to be produced in this Court on the day and hour aforesaid.

(2). If you are detained beyond the day aforesaid, a sum of Rs. will be tendered to you for each day's attendance beyond the day specified.

No. 14.

PROCLAMATION REQUIRING ATTENDANCE OF WITNESS. (O. 16, r. 10.)

(Title.)

To

WHEREAS it appears from the examination on oath of the serving officer that the summons could not be served upon the witness in the manner prescribed by law; and whereas it appears that the evidence of the witness is material and he absconds and keeps out of the way for the purpose of evading the service of the summons: This proclamation is therefore, under rule 10 of Order XVI. of the Code of Civil Procedure, 1908, issued requiring the attendance of the witness in this Court on the _____ day of _____ 19____ at _____ o'clock in the forenoon, and from day to day until he shall have leave to depart; and, if the witness fails to attend on the day and hour aforesaid, he will be dealt with according to law.

GIVEN under my hand and the seal of the Court, this _____ day of _____ 19____.

Judge.

No. 15.

PROCLAMATION REQUIRING ATTENDANCE OF WITNESS. (O. 16, r. 10.)

(Title.)

To

WHEREAS it appears from the examination on oath of the serving officer that the summons has been duly served upon the witness, and whereas it appears that the evidence of the witness is material, and he has failed to attend in compliance with such summons: This proclamation is therefore, under rule 10 of Order XVI. of the Code of Civil Procedure, 1908, issued, requiring the attendance of the witness in this Court on the _____ day of _____ 19____ at _____ o'clock in the forenoon, and from day to day until he shall have leave to depart, and, if the witness fails to attend on the day and hour aforesaid he will be dealt with according to law.

GIVEN under my hand and the seal of the Court, this _____ day of _____ 19____.

Judge.

No. 16.

WARRANT OF ATTACHMENT OF PROPERTY OF WITNESS. (O. 16, r. 10.)

(Title.)

To ^{PLS. 11} ~~PLS. 11~~

The Bailiff of the Court.

WHEREAS the witness _____ cited by _____ has not, after the expiration of the period limited in the proclamation issued for his attendance, appeared in Court; You are hereby directed to hold under attachment _____ property belonging to the said witness to the value of _____ and to submit a return, accompanied with an inventory thereof, within _____ days.

GIVEN under my hand and the seal of the Court, this _____ day of _____ 19____.

Judge.

No. 17.

WARRANT OF ARREST OF WITNESS. (O. 16, r. 10.)

(Title.)

To

The Bailiff of the Court.

WHEREAS has been duly served with a summons but has failed to attend [*or absconds and keeps out of the way for the purpose of avoiding service of a summons*], You are hereby ordered to arrest and bring the said before the Court.

You are further ordered to return this warrant on or before the day of 19 with an endorsement certifying that day on, and the manner in, which it has been executed, or the reason why it has not been executed

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 18.

WARRANT OF COMMITTAL. (O. 16, r. 16.)

(Title.)

To

The Officer in charge of the Jail at

WHEREAS the plaintiff (*or defendant*) in the above-named suit has made application to this Court that security be taken for the appearance of to give evidence (*or to produce a document*), on the day of 19 ; and whereas the Court has called upon the said to furnish such security, which he has failed to do; This is to require you to receive the said into your custody in the civil prison, and to produce him before this Court at on the said day, and on such other day or days as may be hereafter ordered.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 19.

WARRANT OF COMMITTAL. (O. 16, r. 18.)

(Title.)

To

The Officer in charge of the Jail at

WHEREAS , whose attendance is required before this Court in the above-named case to give evidence (*or to produce a document*), has been arrested and brought before the Court in custody; and whereas, owing to the absence of the plaintiff (*or defendant*), the said cannot give such evidence (*or produce such document*); and whereas the

Court has called upon the said _____ to give security for his ap-
pearance on the _____ day of _____, 19____, at _____
which he has failed to do; This is to require you to receive the said _____
into your custody in the civil prison, and to produce him
19____, before this Court at _____ on the _____ day of _____

GIVEN under my hand and the seal of the Court, this day of
19 .

Fudge.

DISCOVERY, INSPECTION, AND ADMISSION.

[Civ. F. C.—17.]

No. 4.

ORDER FOR AFFIDAVIT AS TO DOCUMENTS, (O. 11, r. 12.)

(Title as in No. 1, supra.)

Upon hearing
 It is ordered that the _____ do within _____ days from the
 date of this order, answer on affidavit stating which documents are or have
 been in his possession or power relating to the matter in question in this
 suit, and that the costs of this application be _____

No. 5.

AFFIDAVIT AS TO DOCUMENTS. (O. 11, r. 13.)

(Title as in No. 1, supra.)

I, the above-named defendant C. D., make oath and say as follows:—

1. I have in my possession or power the documents relating to the
 matters in question in this suit set forth in the first and second parts of the
 first schedule hereto.

2. I object to produce the said documents set forth in the second part
 of the first schedule hereto [*state grounds of objection*].

3. I have had, but have not now, in my possession or power the docu-
 ments relating to the matters in question in this suit set forth in the second
 schedule hereto.

4. The last-mentioned documents were last in my possession or power
 on [*state when and what has become of them, and in whose possession they
 now are*].

5. According to the best of my knowledge, information, and belief, I
 have not now, and never had in my possession, custody, or power, or in
 the possession, custody, or power of my pleader or agent, or in the
 possession, custody, or power of any other person on my behalf, any account,
 book of account, voucher, receipt, letter, memorandum, paper or writing, or
 any copy of, or extract from, any such document, or any other document
 whatsoever, relating to the matters in question in this suit or any of them,
 or wherein any entry has been made relative to such matters or any of them,
 other than and except the documents set forth in the said first and second
 schedules hereto.

No. 6.

ORDER TO PRODUCE DOCUMENTS FOR INSPECTION. (O. 11, r. 14.)

(Title as in No. 1, supra.)

Upon hearing _____ and upon reading the affidavit of
 _____ filed the _____ day of _____ 19____; It is ordered,
 that the _____ do, at all reasonable times, on reasonable notice, produce,
 at _____, situate at _____, the following documents,
 namely, _____, and that the _____ be
 at liberty to inspect and peruse the documents so produced, and to make

notes of their contents. In the meantime it is ordered that all further proceedings be stayed, and that the costs of this application be

No. 7.

NOTICE TO PRODUCE DOCUMENTS. (O. 11, r. 16.)

(Title as in No. 1, *supra*.)

Take notice that the [*plaintiff or defendant*] requires you to produce for his inspection the following documents referred to in your [*plaint or written statement or affidavit*] dated the _____ day of _____ 10 _____ :-

[Describe documents required.]

X. Y., Pleader for the

To Z., Pleader for the

No. 8.

NOTICE TO INSPECT DOCUMENTS. (O. 11, r. 17)

(Title as in No. 1 *supra*.)

Take notice that you can inspect the documents mentioned in your notice of the _____ day of _____ 19____ [except the documents numbered in that notice] at [insert place of inspection] on Thursday next, the _____ instant, between the hours of 12 and 4 o'clock.

Or, that the [plaintiff or defendant] objects to giving you inspection of documents mentioned in your notice of the _____ day of _____, 19____, on the ground that [state the ground].

No. 9.

NOTICE TO ADMIT DOCUMENTS. (O. 12, r. 3)

(Title as in No. 1, *supra*.)

Take notice that the plaintiff [or defendant] in this suit proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [or plaintiff], his pleader or agent, at ^{on} between the hours of ; and the defendant [or plaintiff] is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed as they purport respectively to have been ; that such as are specified as copies are true copies ; and such documents as are stated to have been served, sent, or delivered were so served, sent, or

delivered, respectively, saving all just exceptions to the admissibility of all such documents as evidence in this suit.

G. H., pleader [or agent] for plaintiff [or defendant].

To E. F., *pleader [or agent] for defendant [or plaintiff].*

[Here describe the documents and specify as to each document whether it is original or a copy.]

No. 10.

NOTICE TO ADMIT FACTS. (O. 12, r. 5.)

(Title as in No. 1, supra.)

Take notice that the plaintiff [*or defendant*] in this suit requires the defendant [*or plaintiff*] to admit, for the purposes of this suit only, the several facts respectively hereunder specified; and the defendant [*or plaintiff*] is hereby required, within six days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this suit.

G. H., pleader [or agent] for plaintiff [or defendant].

To E. F., *pleader [or agent] for defendant [or plaintiff].*

The facts, the admission of which is required, are—

1. That M. died on the 1st January 1890.
2. That he died intestate.
3. That N. was his only lawful son.
4. That O. died on the 1st April 1896.
5. That O. was never married.

No. 11.

ADMISSION OF FACTS PURSUANT TO NOTICE. (O. 12, r. 5.)

(Title as in No. 1, supra.)

The defendant [*or plaintiff*] in this suit, for the purposes of this suit only, hereby admits the several facts respectively hereunder specified, subject to the qualifications or limitations, if any, hereunder specified, saving all just exceptions to the admissibility of any such facts, or any of them, as evidence in this suit:

Provided that this admission is made for the purposes of this suit only, and is not an admission to be used against the defendant [*or plaintiff*] on

any other occasion or by any one other than the plaintiff [*or defendant, or party requiring the admission*].

E. F., *pleader* [*or agent*] *for defendant* [*or plaintiff*]

To G. H., *pleader* [*or agent*] *for plaintiff* [*or defendant*].

Facts admitted.	Qualifications or limitations, if any, subject to which they are admitted.
1. That M. died on the 1st January 1890	1.
2. That he died intestate ...	2.
3. That N was his lawful son ...	3. But not that he was his only lawful son.
4. That O. died ...	4. But not that he died on the 1st April 1896.
5. That O was never married ...	5.

No 12.

NOTICE TO PRODUCE (GENERAL FORM). (O. 12, r. 8.)

(*Title as in No. 1, supra.*)

Take notice that you are hereby required to produce and show to the Court at the first hearing of this suit all books, papers, letters, copies of letters, and other writings and documents in your custody, possession, or power, containing any entry, memorandum, or minute relating to the matters in question in this suit, and particularly

G. H., *pleader* [*or agent*] *for plaintiff* [*or defendant*].

To E. F., *pleader* [*or agent*] *for defendant* [*or plaintiff*].

APPENDIX D.

DECREES.

No. 1.

DECREE IN ORIGINAL SUIT. (O. 20, rr. 6, 7.)

(Title.)

Claim for

This suit coming on this day for final disposal before
 in the presence of _____ for the plaintiff and of _____
 for the defendant, it is ordered and decreed that
 and that the sum of Rs. _____ be paid by the
 to the _____ on account of the costs of this suit, with
 interest thereon at the rate of _____ per cent. per annum from this date to
 date of realization.

GIVEN under my hand and the seal of the Court, this _____ day
 of _____ 19 . _____ Judge.

Costs of Suit.

Plaintiff.				Defendant.			
	Rs.	A.	P.		Rs.	A.	P.
1. Stamp for plaint ...				Stamp for power ...			
2. Do. for power ..				Do. for petition .			
3. Do. for exhibits ...				Pleader's fee ...			
4. Pleader's fee on Rs. ...				Subsistence for witnesses			
5. Subsistence for witnesses				Service of process ...			
6. Commissioner's fee ...				Commissioner's fee ...			
7. Service of process ...							
Total ...				Total ...			

No. 2.

SIMPLE MONEY DECREE. (Section 34.)

(Title.)

Claim for

This suit coming on this day for final disposal before
 in the presence of _____ for the plaintiff and of _____ for the
 defendant, it is ordered that the _____ do pay to the
 the sum of Rs. _____ with interest thereon at the rate of _____
 per cent. per annum from _____ to the date of realization of the

said sum, and do also pay Rs. _____, the costs of this suit, with interest thereon at the rate of _____ per cent. per annum from this date to the date of realization.

GIVEN under my hand and the seal of the Court, this _____ day of _____ 19 ____.

Costs of Suit.

Judge.

Plaintiff.			Defendant.		
	Rs.	A.	P.		Rs. A. P.
1. Stamp for plaint				Stamp for power	
2. Do for power				Do for petition	
3. Do for exhibits				Pleader's fee	
Pleader's fee on Rs.				Subsistence for witnesses	
Subsistence for witnesses				Service of process	
Commissioner's fee				Commissioner's fee	
Service of process					
Total				Total	

No. 3.

PRELIMINARY DECREE FOR FORECLOSURE. (O 34, r. 2.)

(Title.)

This suit coming on this day, etc.; It is hereby declared that the amount due to the plaintiff on account of principal, interest, and costs calculated up to the _____ day _____ 19 _____, is Rs. _____; and it is decreed as follows:—

(1) That, if the defendant pays into Court the amount so declared due on or before the said _____ day of _____ 19 _____, the plaintiff shall deliver up to the defendant, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, re-transfer the property to the defendant free from the mortgage and from all incumbrances created by the plaintiff or any person claiming under him. [Where the plaintiff claims by derived title, add *or by those under whom he claims*] [Where the plaintiff is in possession, add *and shall put the defendant in possession of the property*.]

(2) That if such payment is not made on or before the said _____ day of _____ 19 _____, the defendant shall be debarred from all right to redeem the property.

Schedule.

Description of the mortgaged property.

No. 4.

PRELIMINARY DECREE FOR SALE. (O. 34, r. 4.)

(Title.)

This suit coming on this day, etc.; It is hereby declared that the amount due to the plaintiff on account of principal, interest, and costs calculated up to the day of 19 , is Rs. , and that such amount shall carry interest at the rate of per cent. per annum until realization, and it is decreed as follows:—

(1) That, if the defendant pays into Court the amount so declared due on or before the said day of 19 , the plaintiff shall deliver up to the defendant, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property and shall, if so required, re-transfer the property to the defendant free from the mortgage and from all incumbrances created by the plaintiff or any person claiming under him. [Where the plaintiff claims by derived title, add *or by those under whom he claims.*] [Where the plaintiff is in possession, add *and shall put the defendant in possession of the property.*]

(2) That, if such payment is not made on or before the said day of 19 , the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereof the expenses of the sale) be paid into Court and applied in payment of what is declared due to the plaintiff as aforesaid together with subsequent interest and subsequent costs, and that the balance, if any, be paid to the defendant.

(3) That, if the net proceeds of the sale are insufficient to pay such amount and such subsequent interest and costs in full, the plaintiff shall be at liberty to apply for a personal decree for the amount of the balance.

*Schedule.**Description of the mortgaged property.*

No. 5.

PRELIMINARY DECREE FOR REDEMPTION. (O. 34, r. 7.)

(Title.)

This suit coming on this day, etc.; It is hereby declared that the amount due to the defendant on account of the principal, interest, and costs calculated up to the day of 19 , is Rs. ;

and it is decreed as follows:—

(1) That, if the plaintiff pays into Court the amount so declared due on or before the said day of 19 , the defendants shall deliver up to the plaintiff, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, retransfer the property to the plaintiff free from the mortgage and from all incumbrances created by the defendant or any person claiming under him. [Where the defendant claims by derived title, add *or by those under whom he claims.*] [Where the defendant is in possession, add *and shall put the plaintiff in possession of the property.*]

(2) That, if such payment is not made on or before the said day of 19, the plaintiff shall be debarred from all right to redeem the property. [If the mortgage is simple or usufructuary, substitute *the property shall be sold.*]

Schedule.

Description of the mortgaged property.

No. 6.

DECREE FOR FORECLOSURE — FIRST MORTGAGEE *v.* SECOND MORTGAGEE
AND MORTGAGOR—SUCCESSIVE PERIODS FOR REDEMPTION.

(Title.)

It is hereby declared that the amount due to the plaintiff on account of principal, interest, and costs calculated up to the day of 19, (a) is Rs. x , and that, on the day of 19, (b) there will be due to the plaintiff for interest the further sum of Rs. y , making in all Rs. y ; and it is further declared that, on the day of 19, (b) there will be due to the first defendant on account of principal, interest, and costs Rs. z ,

and it is decreed as follows :—

(1) That, if the first defendant pays into Court the said sum of Rs. x on or before the said day of 19,

(a) the plaintiff shall deliver up, etc., (as in Form No. 3).

(2) That, in default of the first defendant paying the said sum on or before the said day, he shall be debarred from all right to redeem the property.

(3) That, in case of such foreclosure, and if the second defendant pays into Court the said sum of Rs. y , on or before the day of 19, (b) the plaintiff shall deliver up, etc. (as in Form No. 3).

(4) That, in default of the second defendant paying the said sum on or before the said day, he shall be debarred from all right to redeem the property.

(5) That, in case the first defendant shall redeem the mortgaged property, if the second defendant pays into Court the said sums of Rs. y and Rs. z on or before the day of 19, (b) the first defendant shall deliver up, etc., (as in Form No. 3)

(6) That, in default of the second defendant paying the said sums on or before the said day he shall be debarred from all right to redeem the property. [Where the second defendant is in possession, add *and shall put the first defendant in possession of the property.*]

(a) Insert a day within six months from the date of decree.

(b) Insert a day within three months from the date mentioned in (a).

No. 7.

DECREE FOR SALE.—FIRST MORTGAGEE *v.* SECOND MORTGAGEE AND MORTGAGOR.—ONE PERIOD FOR REDEMPTION.

(Title.)

It is hereby declared that the amount due to the plaintiff on account of principal, interest, and costs calculated up to the day of 19 , is Rs. x and that on the said day there will be due to the first defendant on account of principal, interest, and costs Rs. y ,

and it is decreed as follows:—

(1) That, if the defendants or either of them pay into Court the said sum of Rs. x on or before the said day of 19 , the plaintiff shall deliver up, etc. (as in Form No. 4).

(2) That, if payment of the said sum is not made on or before the day of 19 , the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court to the credit of this suit, and applied, first, in payment to the plaintiff of the said sum of Rs. x and such subsequent interest and costs as may be allowed by the Court; secondly, in payment to the first defendant of the said sum of Rs. y and such subsequent interest and costs as aforesaid; and that the balance, if any, be paid to the second defendant.

(3) That, in case the defendants or either of them shall pay the said sum of Rs. x as aforesaid, he or they shall be at liberty to apply to the Court that the plaintiff's mortgage may be kept alive for the benefit of the person making the said payment or otherwise as he or they may be advised.

(4) That, if the net proceeds of the sale are insufficient to pay the said sum of Rs. x and such subsequent interest and costs in full, the plaintiff shall be at liberty to apply for a personal decree for the amount of the balance.

No. 8.

DECREE FOR SALE.—SECOND MORTGAGEE *v.* FIRST MORTGAGEE AND MORTGAGOR.—ONE PERIOD FOR REDEMPTION.

(Title.)

[Insert declarations of the amounts due to the plaintiff Rs. y and to the first defendant Rs. x as in Form No. 7.]

And it is decreed as follows:—

(1) That, if the plaintiff or the second defendant pays into Court the said sum of Rs. x on or before the said day of 19 , the first defendant shall deliver up, etc. (as in Form No. 4)

(2) That, if payment of the said sum is not made on or before the day of 19 , the first defendant shall be at liberty to apply that the suit be dismissed, or for the sale of the mortgaged

property; and, in case he shall apply for a sale, the mortgaged property or a sufficient part thereof shall be sold free from the incumbrances of the plaintiff and first defendant, and the proceeds of the sale (after defraying thereout the expenses of the sale) shall be paid into Court and applied, first, in payment to the first defendant of the said sum of Rs. *x* and such subsequent interest and costs as may be allowed by the Court: secondly, in payment to the plaintiff of the said sum of Rs. *y* and such subsequent interest and costs as aforesaid: and that the balance, if any, be paid to the second defendant.

(3) That, if the plaintiff shall pay the said sum of Rs. *x* into Court on or before the day of 19 , the second defendant shall be at liberty to pay into Court the said sum and the sum of Rs. *y* on or before the day of 19 , and thereupon the plaintiff shall deliver up, etc. (as in Form No. 4).

(4) That, if the plaintiff shall pay the said sum as aforesaid, but the second defendant shall fail to pay the said sums as aforesaid the mortgaged property or a sufficient part thereof shall be sold, and the proceeds of the sale (after defraying thereout the expenses of the sale) shall be applied in payment to the plaintiff of the said sums of Rs. *x* and Rs. *y* and such subsequent interest and costs as may be allowed by the Court, and that the balance, if any, be paid to the second defendant.

(5) That, if the not proceeds of the sale are insufficient to pay the said sums, interest, and costs in full, the plaintiff shall be at liberty to apply for a personal decree for the amount of the balance.

No. 9.

DECREE FOR SALE—SUB-MORTGAGEE *v.* MORTGAGEE AND MORTGAGOR,
THE AMOUNT OF THE ORIGINAL MORTGAGE EXCEEDING THAT OF THE
SUB-MORTGAGE.

(Title.)

[Insert declarations of the amounts due to the plaintiff Rs. *x* and to the first defendant Rs. *y* as in Form No. 7.]

And it is decreed as follows:—

(1) The first defendant and the second defendant shall be at liberty to pay into Court the said sums of Rs. *x* and Rs. *y* respectively on or before the day of 19 , and, upon either of the said payments being made, the plaintiff shall deliver up, etc. (as in Form No. 4), and thereupon the sum of Rs. *x* shall be paid to the plaintiff.

(2) In the event of payment by the second defendant as aforesaid the first defendant shall also deliver up, etc. (as in Form No. 4), and thereupon the residue (after payment to the plaintiff as aforesaid) shall be paid to the first defendant.

(3) In default of payment by the first and second defendants as aforesaid, the mortgaged property or a sufficient part thereof shall be sold, and the proceeds of the sale (after deducting thereout the expenses of the sale)

(5) That, if the net proceeds of the sale are insufficient to pay the aforesaid sums with further interest and costs, the plaintiff or the first defendant, as the case may be, shall be at liberty to apply for a personal decree for the amount of the balance.

Whereas the net proceeds of the sale held under the final decree for sale passed in this suit on the _____ day of _____ 19____, and now in Court to the credit of this suit, amount to Rs. y, and there is now due to the plaintiff the sum of Rs. x mentioned in the said decree together with the fur her sum of Rs. _____ interest thereon at the rate of 6 per cent. per annum from the _____ day of _____ 19____ to this day,

and also the sum of Rs. for his costs of this suit subsequent to the decree, making a balance due to the plaintiff of Rs. *₹*; And whereas it appears to this Court that the defendant is personally liable for the said balance,

It is hereby decreed as follows :—

(1) That the said sum of Rs. *y* be paid out of Court to the plaintiff.

(2) That the defendant do pay to the plaintiff the said sum of Rs. *₹* with interest thereon at the rate of 6 per cent. per annum from this day to the date of realization of the said sum.

No. 12.

DECREE FOR RECTIFICATION OF INSTRUMENT.

(Title)

It is hereby declared that the dated the day of 19 , does not truly express the intention of the parties to such .

And it is decreed that the said be rectified by .

No. 13.

DECREE TO SET ASIDE A TRANSFER IN FRAUD OF CREDITORS.

(Title.)

It is hereby declared that the , dated the day of 19 , and made between and is void as against the plaintiff and all other the creditors, if any, of the defendant .

No. 14.

INJUNCTION AGAINST PRIVATE NUISANCE.

(Title.)

Let the defendant , his agents, servants and workmen, be perpetually restrained from burning, or causing to be burnt, any bricks on the defendant's plot of land marked B in the annexed plan, so as to occasion a nuisance to the plaintiff as the owner or occupier of the dwelling house and garden mentioned in the plaint as belonging to and being occupied by the plaintiff.

No. 15.

INJUNCTION AGAINST BUILDING HIGHER THAN OLD LEVEL.

(Title.)

Let the defendant , his contractors, agents, and workmen, be perpetually restrained from continuing to erect upon his premises in any house or building of a greater height than the

buildings which formerly stood upon his said premises and which have been recently pulled down, so or in such manner as to darken, injure, or obstruct such of the plaintiff's windows in his said premises as are ancient lights

No. 16.

INJUNCTION RESTRAINING USE OF PRIVATE ROAD.

(Title.)

Let the defendant _____, his agents, servants and workmen' be perpetually restrained from using or permitting to be used any part of the lane at _____, the soil of which belongs to the plaintiff, as a carriage-way for the passage of carts, carriages, or other vehicles, either going to or from the land marked B in the annexed plan, or for any purpose whatsoever.

No. 17.

PRELIMINARY DECREE IN AN ADMINISTRATION SUIT.

(Title.)

It is ordered that the following accounts and inquiries be taken and made; that is to say :—

In creditor's suit—

1. That an account be taken of what is due to the plaintiff and all other the creditors of the deceased.

In suits by legatees—

2. That an account be taken of the legacies given by the testator's will.

In suits by next-of-kin—

3 That an inquiry be made and account taken of what or of what share, if any, the plaintiff is entitled to as next-of-kin [or one of the next-of-kin] of the intestate.

[After the first paragraph, the decree will, where necessary, order in a creditor's suit, inquiry and accounts for legatees, heirs-at-law, and next-of-kin. In suits by claimants other than creditors, after the first paragraph, in all cases, an order to enquire and take an account of creditors will follow the first paragraph and such of the others as may be necessary will follow, omitting the first formal words. The form is continued as in a creditor's suit

4. An account of the funeral and testamentary expenses.

5. An account of the moveable property of the deceased come to the hands of the defendant, or to the hands of any other person by his order or for his use.

6. An inquiry what part (if any) of the moveable property of the deceased is outstanding and undisposed of.

7. And it is further ordered that the defendant do, on or before the day of _____ next, pay into Court all sums of

money which shall be found to have come to his hands, or to the hands of any person by his order or for his use.

8. And that, if the * shall find it necessary for carrying out the objects of the suit to sell any part of the moveable property of the deceased, that the same be sold accordingly, and the proceeds paid into Court.

9. And that Mr. E. F. be receiver in the suit (or proceeding) and receive and get in all outstanding debts and outstanding moveable property of the deceased, and pay the same into the hands of the * (and shall give security by bond for the due performance of his duties to the amount of rupees).

10. And it is further ordered that, if the moveable property of the deceased be found insufficient for carrying out the objects of the suit, then the following further inquiries be made, and accounts taken, that is to say,—

(a) an inquiry what immoveable property the deceased was seized of or entitled to at the time of his death,

(b) an inquiry what are the incumbrances (if any) affecting the immoveable property of the deceased or any part thereof;

(c) an account, so far as possible, of what is due to the several incumbrancers, and to include a statement of the priorities of such of the incumbrancers as shall consent to the sale, hereinafter directed.

11. And that the immoveable property of the deceased, or so much thereof, as shall be necessary to make up the fund in Court sufficient to carry out the object of the suit, be sold with the approbation of the Judge, free from incumbrances (if any) of such incumbrancers as shall consent to the sale, and subject to the incumbrances of such of them as shall not consent.

12. And it is ordered that G. H. shall have the conduct of the sale of the immoveable property, and shall prepare the conditions and contracts of sale subject to the approval of the * and that in case any doubt or difficulty shall arise the papers shall be submitted to the Judge to settle.

13. And it is further ordered that, for the purpose of the inquiries hereinafter directed, the * shall advertise in the newspapers according to the practice of the Court, or shall make such inquiries in any other way which shall appear to the * to give the most useful publicity to such inquiries.

14. And it is ordered that the above inquiries and accounts be made and taken, and that all other acts ordered to be done be completed, before the day of , and that the * do certify the result of the inquiries and the accounts, and that all other acts ordered are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of .

* Here insert name of proper officer.

15. And, lastly, it is ordered that this suit [*or proceeding*] stand adjourned for making final decree to the _____ day of _____.

[Such part only of this decree is to be used as is applicable to the particular case]

No. 18.

FINAL DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE.

(Title.)

1. It is ordered that the defendant _____ do, on or before the _____ day of _____ pay into Court the sum of Rs. _____, the balance by the said certificate found to be due from the said defendant on account of the estate of _____, the testator, and also the sum of Rs. _____ for interest, at the rate of Rs. _____ per cent. per annum, from the _____ day of _____ to the _____ day of _____, amounting together to the sum of Rs. _____.

2. Let the _____ * of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said costs, when so taxed, be paid out of the said sum of Rs. _____ ordered to be paid into Court as aforesaid, as follows:—

(a) The costs of the plaintiff to Mr. _____, his attorney [*or pleader*], and the costs of the defendant to Mr. _____, his attorney [*or pleader*].

(b) And (*if any debts are due*) with the residue of the said sum of Rs. _____, after payment of the plaintiff's and defendant's costs as aforesaid, let the sums, found to be owing to the several creditors mentioned in the schedule to the certificate of the _____, * together with subsequent interest on such of the debts as bear interest, be paid, and, after making such payments, let the amount coming to the several legatees mentioned in the schedule, together with subsequent interest (to be verified as aforesaid), be paid to them.

3. And, if there should then be any residue, let the same be paid to the residuary legatee.

No. 19.

PRELIMINARY DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE, WHERE AN EXECUTOR IS HELD PERSONALLY LIABLE FOR THE PAYMENT OF LEGACIES.

(Title.)

1. It is declared that the defendant is personally liable to pay the legacy of Rs. _____ bequeathed to the plaintiff;

* Here insert name of proper officer.

2. And it is ordered that an account be taken of what is due for principal and interest on the said legacy,

3 And it is also ordered that the defendant do, within _____ weeks after the date of the certificate of the _____ * pay to the plaintiff the amount of what the _____ shall certify to be due for principal and interest;

4. And it is ordered that the defendant do pay the plaintiff his costs of suit, the same to be taxed in case the parties differ.

No. 20.

FINAL DECREE IN AN ADMINISTRATION-SUIT BY NEXT OF KIN.

(Title.)

1 Let the _____ * of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said plaintiff's costs, when so taxed, be paid by the defendant to the plaintiff out of the sum of Rs. _____, the balance by the said certificate found to be due from the said defendant on account of the personal estate of E. F., the intestate, within one week after the taxation of the said costs by the said _____ * and let the defendant retain for her own use out of such sum her costs, when taxed.

2. And it is ordered that the residue of the said sum of Rs. _____, after payment of the plaintiff's and defendant's costs as aforesaid, be paid and applied by defendant as follows:—

- (a) Let the defendant, within one week after the taxation of the said costs by the _____ * as aforesaid, pay one-third share of the said residue to the plaintiffs A. B., and C. D., his wife, in her right as the sister and one of the next-of-kin of the said E. F., the intestate.
- (b) Let the defendant retain for her own use one other third share of the said residue, as the mother and one of the next-of-kin of the said E. F., the intestate.
- (c) And let the defendant, within one week after the taxation of the said costs by the _____ * as aforesaid, pay the remaining one-third share of the said residue to G. H., as the brother and the other next-of-kin of the said E. F., the intestate.

No. 21.

PRELIMINARY DECREE IN A SUIT FOR DISSOLUTION OF PARTNERSHIP AND THE TAKING OF PARTNERSHIP-ACCOUNTS.

(Title.)

It is declared that the proportionate shares of the parties in the partnership are as follows:—

* Here insert name of proper officer.

It is declared that this partnership shall stand dissolved [or shall be deemed to have been dissolved] as from the day of , and it is ordered that the dissolution thereof as from that day be advertised in the Gazette, etc.

And it is ordered that be the receiver of the partnership-estate and effects in this suit and do get in all the outstanding book-debts and claims of the partnership.

And it is ordered that the following accounts be taken :—

1. An account of the credits, property, and effects now belonging to the said partnership ;

2. An account of the debts and liabilities of the said partnership ;

3. An account of all dealings and transactions between the plaintiff and defendant, from the foot of the settled account exhibited in this suit and marked (A), and not disturbing any subsequent settled accounts.

And it is ordered that the good will of the business heretofore carried on by the plaintiff and defendant as in the plaint mentioned, and the stock-in-trade, be sold on the premises, and that the * may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties is to be at liberty to bid at the sale.

And it is ordered that the above accounts be taken, and all the other acts required to be done be completed before the day of , and that the * do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of .

And, lastly, it is ordered that this suit stand adjourned for making a final decree to the day of .

No. 22.

FINAL DECREE IN A SUIT FOR DISSOLUTION OF PARTNERSHIP AND THE TAKING OF PARTNERSHIP-ACCOUNTS.

(Title.)

It is ordered that the fund now in Court, amounting to the sum of Rs. , be applied as follow:—

1. In payment of the debts due by the partnership set forth in the certificate of the * amounting the whole to Rs. .

2. In payment of the costs of all parties in this suit, amounting to Rs. .

[These costs must be ascertained before the decree is drawn up.]

3. In payment of the sum of Rs. to the plaintiff as his share of the partnership-assets, of the sum of Rs. , being the residue of .

* Here insert name of proper officer.

the said sum of Rs. now in Court, to the defendant as his share of the partnership-assets.

[Or, And that the remainder of the said sum of Rs. be paid to the said plaintiff [or defendant] in part payment of the sum of Rs. certified to be due to him in respect of the partnership-accounts.]

4. And that the defendant [or plaintiff] do on or before the day of , pay to the plaintiff [or defendant] the sum of Rs. being the balance of the said sum of Rs. due to him, which will then remain due.

No. 23.

DECREE FOR RECOVERY OF LAND AND MESNE-PROFITS.

(Title.)

It is hereby decreed as follows :—

(1) That the defendant do put the plaintiff in possession of the property specified in the schedule hereunto annexed.

(2) That the defendant do pay to the plaintiff the sum of Rs. with interest thereon at the rate of per cent. per annum to the date of realization on account of mesne-profits which have accrued due prior to the institution of the suit.

Or

(2) That an enquiry be made as to the amount of mesne-profits which have accrued due prior to the institution of the suit.

(3) That an inquiry be made as to the amount of mesne-profits from the institution of the suit until [the delivery of possession to the decree-holder] [the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court] [the expiration of three years from the date of the decree].

Schedule.

APPENDIX E.

EXECUTION.

No. 1.

NOTICE TO SHOW CAUSE WHY A PAYMENT OR ADJUSTMENT SHOULD NOT BE
RECORDED AS CERTIFIED. (O. 21, r. 2.)

(Title.)

To

WHEREAS in execution of the decree in the above-named suit
has applied to this Court that the sum of Rs
recoverable under the decree has been $\frac{\text{paid}}{\text{adjusted}}$ and should be recorded as
certified, this is to give you notice that you are to appear before this Court
on the day of 19 , to show
cause why the $\frac{\text{payment}}{\text{adjustment}}$ aforesaid should not be recorded as certified

GIVEN under my hand and the seal of the Court, this
day of 19 .

Judge.

No. 2.

PRECEPT. (Section 46.)

(Title.)

UPON hearing the decree-holder it is ordered that this precept be sent
to the Court of at under section
46 of the Code of Civil Procedure, 1908, with directions to attach the pro-
perty specified in the annexed schedule and to hold the same pending any
application which may be made by the decree-holder for execution of the
decree.

Schedule.

Dated the day of 19 .

Judge.

No. 3.

ORDER SENDING DECREE FOR EXECUTION TO ANOTHER COURT. (O. 21, r. 6.)

(Title.)

WHEREAS the decree-holder in the above suit has applied to this Court
for a Certificate to be sent to the Court of at for execution of the decree in the above suit
by the said Court, alleging that the judgment-debtor resides or has property
within the local limits of the jurisdiction of the said Court, and it is deemed
necessary and proper to send a certificate to the said Court under Order
XXI., rule 6, of the Code of Civil Procedure, 1908, it is

Ordered :

That a copy of this order be sent to _____ with a copy of the decree and of any order which may have been made for execution of the same and a certificate of non-satisfaction.

Dated the _____ day of _____ 19 _____
Judge.

No. 4.

CERTIFICATE OF NON-SATISFACTION OF DECREE. (O. 21, r. 6.)

(*Title.*)

Certified that no (1) satisfaction of the decree of this Court in Suit No. _____ of 19 _____, a copy which is hereunto attached, has been obtained by execution within the jurisdiction of this Court.

Dated the _____ day of _____ 19 _____
Judge.

(1) If partial, strike out "no," and state to what extent.

No. 5.

CERTIFICATE OF EXECUTION OF DECREE TRANSFERRED TO ANOTHER COURT.
(O. 21, r. 6.)

(Title.)

1	2	3	4	5	6	7	8	9
Number of suit and the Court by which the decree was passed.	Names of parties.	Date of application for execution.	Number of the execution case.	Processes issued and dates of service thereon.	Costs of execution.	Amount realized.	How the case is disposed of.	Remarks.
					Rs. A. P.	Rs. A. P.		

Signature of Muharrir in charge.

Signature of Judge.

No. 6.

APPLICATION FOR EXECUTION OF DECREE. (O. 21, r. 11)

In the Court of

I, _____, decree-holder, hereby apply for execution of the decree herein below set forth :—

1	2	3	4	5	6	7	8	9	10
No. of suit.	Names of parties.	Date of decree.	Whether any appeal preferred from decree.	Payment or adjustment made, if any.	Previous application, if any, with date and result.	Amount with interest due upon the decree or other relief granted thereby together with particulars of any cross-decree.	Amount of costs, if any, awarded.	Against whom to be executed	Made in which the assistance of the Court is required.
59 of 1897.	A. B.—Plaintiff. C. D.—Defendant.	October 11th, 1897.	No.	None.	Rs. 72-4 recorded on application, dated the 4th March 1899.				
					Rs. 314-8-2 principal [interest at 6 per cent. per annum, from date of decree till payment.]				
						As awarded in the decree Subsequently incurred	Rs. A. P. 47 10 4 8 2 0 <hr/> Total . . . 55 12 4		
							Against the defendant C. D.		
									<p>[When attachment and sale of moveable property is sought.]</p> <p>I pray that the total amount of Rs. [together with interest on the principal sum up to date of payment] and the costs of taking out this execution, be realized by attachment and sale of defendant's moveable property as per annexed list and paid to me.</p> <p>[When attachment and sale of immoveable property is sought.]</p> <p>I pray that the total amount of Rs. [together with interest on the principal sum up to date of payment] and the costs of taking out this execution be realized by the attachment and sale of defendant's immoveable property specified at the foot of this application and paid to me.</p>

declare that what is stated herein is true to the best of my knowledge and belief.

dated the _____ day of _____ Signed _____

Decree-holder.

dated the

day of

19

[When attachment and sale of immoveable property is sought.]

Description and Specification of Property.

The undivided one-third share of the judgment-debtor in a house situated in the village of _____ value Rs. 40 and bounded as follows:—

East by G's house; west by H's house; south by public road, north by private lane and J's house.

I _____ declare that what is stated in the above description is true to the best of my knowledge and belief, and so far as I have been able to ascertain the interest of the defendant in the property therein specified.

Signed _____

, Decree-holder.

No. 7.

NOTICE TO SHOW CAUSE WHY EXECUTION SHOULD NOT ISSUE. (O. 21, r. 22.)

(Title.)

To

WHEREAS

has made application to this Court for execution of decree in Suit No. _____ of 19 _____ on the allegation that the said decree has been transferred to him by assignment, this is to give you notice that you are to appear before this Court _____ on the _____ day of _____ 19 _____, to show cause why execution should not be granted.

GIVEN under my hand and the seal of the Court, this day of _____ 19 _____.

Judge.

No. 8.

WARRANT OF ATTACHMENT OF MOVEABLE PROPERTY IN EXECUTION OF A DECREE FOR MONEY. (O. 21, r. 30.)

(Title)

To

The Bailiff of the Court.

WHEREAS

was ordered by decree of this Court passed

DECREE.					on the _____ day of _____ 19 _____, in Suit No. _____ of _____ 19 _____ to pay to the plaintiff the sum of Rs. _____ as noted in the margin; and whereas the said sum of Rs. _____ has not been paid; These are to command you to attach the moveable property of the said _____ as set forth in the schedule hereunto annexed, or which shall be pointed out to you by the said _____, and unless the said _____ shall pay to you the said sum of Rs. _____ together with Rs. _____ the costs
Principal	...				
Interest	...				
Costs	...				
Costs of execution	...				
Further interest	...				
Total	...				

of this attachment, to hold the same until further orders from this Court.

You are further commanded to return this warrant on or before the day of 19 , with an endorsement certifying the day on which and manner in which it has been executed, or why it has not been executed.

GIVEN under my hand and the seal of the Court, this 19 day of

Schedule.

Judge.

No. 9.

WARRANT FOR SEIZURE OF SPECIFIC MOVEABLE PROPERTY ADJUDGED
BY DECREE (O. 21, r. 31.)

(*Title.*)

To

The Bailiff of the Court.

WHEREAS was ordered by decree of this Court passed on the day of 19 , in Suit No. of 19 , to deliver to the plaintiff the moveable property (or a share in the moveable property) specified in the schedule hereunto annexed, and whereas the said property (or share) has not been delivered;

These are to command you to seize the said property (or a moveable share of the said moveable property) and to deliver it to the plaintiff or to such person as he may appoint in his behalf.

GIVEN under my hand and the seal of the Court, this 19 day of

Schedule.

Judge.

No. 10.

NOTICE TO STATE OBJECTIONS TO DRAFT OF DOCUMENT. (O. 21, r. 34.)

(*Title.*)

To

TAKE notice that on the day of 19 , the decree holder in the above suit presented an application to this Court that the Court may execute on your behalf a deed of , whereof a draft is hereunto annexed, of the immovable property specified hereunder, and that the day of 19 is appointed for the hearing of the said application; and that you are at liberty to appear on the said day, and to state in writing any objections to the said draft.

Description of Property.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 11.

WARRANT TO THE BAILIFF TO GIVE POSSESSION OF LAND ETC. (O. 21, r. 35.)

(Title.)

To

The Bailiff of the Court.

WHEREAS the undermentioned property in the occupancy of
has been decreed to , the plaintiff in this suit; You are
hereby directed to put the said in possession of the same,
and you are hereby authorized to remove any person bound by the decree
who may refuse to vacate the same.

GIVEN under my hand and the seal of the Court, this day
of 19 .

Schedule.Judge.

No 12.

NOTICE TO SHOW CAUSE WHY WARRANT OF ARREST SHOULD NOT ISSUE.

(O. 21 r. 37.)

To

WHEREAS has made application to this Court for exe-
cution of decree in suit No. of 19 by arrest and imprisonment
of your person, you are hereby required to appear before this Court on
the day of 19 , to show cause why you should not be
committed to the civil prison in execution of the said decree.

GIVEN under my hand and the seal of the Court, this
day of 19 .

Judge.

No. 13.

WARRANT OF ARREST IN EXECUTION. (O 21. r. 38.)

(Title)

To

The Bailiff of the Court.

WHEREAS was adjudged by a decree of the Court in
Suit No. of 19 , dated the day of

				19 , to pay to the decree-holder the sum of Rs. as noted in the margin and whereas the said sum of Rs has not been paid to the said decree-holder in satisfac- tion of the said decree, these are to command you to arrest the said judgment-debtor and unless the said judgment-debtor shall pay to you the said sum of Rs. , together with Rs. for the costs of execut- ing this process, to bring the said defendant before the Court with all convenient speed. You are further commanded to return this warrant on or before the day of
Principal	...			
Interest	...			
Costs	...			
Execution	...			
Total	...			

19 * , with an endorsement certifying the day on which and manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 14.

WARRANT OF COMMITTAL OF JUDGMENT-DEBTOR TO JAIL. (O. 21, r. 40.)
(Title.)

To

The Officer in charge of the Jail at
WHEREAS who has been brought before this Court
this day of 19 , under a warrant in execution of a decree which was made and pronounced by the said Court on the day of 19 , and by which decree it was ordered that the said should pay ; And whereas the said has not obeyed the decree, nor satisfied the Court that he is entitled to be discharged from custody, You are hereby, in the name of the King-Emperor of India, commanded and required to take and receive the said into the civil prison, and keep him imprisoned therein for a period not exceeding or until the said decree shall be fully satisfied, or the said shall be otherwise entitled to be released according to the terms and provisions of section 58 of the Code of Civil Procedure, 1908; and the Court does hereby fix annas per diem as the rate of the monthly allowance for the subsistence of the said during his confinement under this warrant of committal.

GIVEN under my signature and the seal of this Court, this day of 19 .

Judge.

No. 15.

ORDER FOR THE RELEASE OF A PERSON IMPRISONED IN EXECUTION OF A DECREE. (Sections 58, 59)
(Title.)

To

The Officer in charge of the Jail at
UNDER orders passed this day, you are hereby directed to set free judgment-debtor now in your custody. .

Dated

Judge

No. 16.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY TO BE ATTACHED CONSISTS OF
MOVEABLE PROPERTY TO WHICH THE DEFENDANT IS ENTITLED SUBJECT
TO A LIEN OR RIGHT OF SOME OTHER PERSON TO THE IMMEDIATE POS-
SESSION THEREOF. (Q. 21, r. 46.)

(Title.)

To WHEREAS _____ has failed to satisfy a decree passed against _____
_____ on the _____ day of _____ 19 _____ in suit
No. _____ of 19 _____, in favour of _____ for Rs. _____;
It is ordered that the defendant be, and is hereby, prohibited and restrained,
until the further order of this Court, from receiving from _____ the
following property in the possession of the said _____, that is
to say, _____, to which the defendant is entitled, subject to any
claim of the said _____, and the said _____ is hereby
prohibited and restrained, until the further order of this Court, from deli-
vering the said property to any person or persons whomsoever

GIVEN under my hand and the seal of the Court, this day
of 19 .

Fudge,

No. 17.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF DEBTS NOT SECURED BY NEGOTIABLE INSTRUMENTS. (O. 21, r. 46.)

(Title)

To
 WHEREAS
 has failed to satisfy a decree passed against on the day of
 19 in suit No. of 19 , in favour of
 , or Rs. , It is ordered that the defendant be, and is hereby, pro-
 hibited and restrained, until the further order of this Court, from receiving
 from you a certain debt alleged now to be due from you to the said defend-
 ant, namely, and that you, the said ,
 be, and you are hereby, prohibited and restrained, until the further order of
 this Court, from making payment of the said debt or any part thereof, to
 any person whomsoever or otherwise than into this Court.

GIVEN under my hand and the seal of the Court, this day
of 19 .

Fudge.

No. 18.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF SHARES IN THE CAPITAL OF A CORPORATION. (O. 21, r. 46)

(Title.)

To _____ Defendant, and to
 _____, Secretary of _____ Corporation.
 WHEREAS _____ has failed to satisfy a decree passed against
 _____ on the _____ day of _____ 19____, in suit No _____ of
 19____, in favour of _____, for Rs _____; It is ordered that you, the
 defendant, be, and you are hereby, prohibited and restrained until the
 further order of this Court, from making any transfer of _____ shares
 in the aforesaid Corporation, namely, _____, or from receiving
 payment of any dividends thereon, and you, _____, the
 Secretary of the said Corporation, are hereby prohibited and restrained
 from permitting any such transfer, or making any such payment

GIVEN under my hand and the seal of the Court, this _____ day of
 19____.

Judge.

No. 19.

ORDER TO ATTACH SALARY OF PUBLIC OFFICER OR SERVANT OF RAILWAY COMPANY OR LOCAL AUTHORITY. (O. 21, r. 48.)

(Title.)

To _____
 WHEREAS _____, judgment-debtor in the above-named
 case, is a (*describe office of judgment-debtor*) receiving his salary (*or* allow-
 ances at your hands, and whereas _____, decree-holder in the said
 case, has applied in this Court for the attachment of the salary (*or* allow-
 ances) of the said _____ to the extent of _____ due to him under the
 decree; You are hereby required to withhold the said sum of _____
 from the salary of the said _____ in monthly instalments of _____
 and to remit the said sum (*or* monthly instal-
 ments) to this Court.

GIVEN under my hand and the seal of the Court, this _____ day
 of _____ 19____.

Judge.

No. 20.

ORDER OF ATTACHMENT OF NEGOTIABLE INSTRUMENT. (O. 21, r. 51.)

(Title.)

To _____
 The Bailiff of the Court.
 WHEREAS an order has been passed by this Court on the
 _____ day of _____ 19____, for the attachment of

; You are hereby directed to seize the said and
bring the same into Court.

GIVEN under my hand and the seal of the Court, this day of
19 .

Judge.

No. 21.

ATTACHMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY OR OF
ANY SECURITY IN THE CUSTODY OF A COURT OF JUSTICE OR OFFICER
OF GOVERNMENT. (O. 21, r. 52.)

(Title.)

To

SIR,

The plaintiff having applied, under rule 22 of Order XXI. of the Code
of Civil Procedure, 1908, for an attachment of certain money now in your
hands (*here state, how the money is supposed to be in the hands of the per-
son addressed, on what account, etc.*) I request that you will hold the said
money subject to the further order of this Court.

I have the honour to be

SIR,

Your most obedient Servant,

Judge.

Dated the day of 19 .

No. 22.

NOTICE OF ATTACHMENT OF A DECREE TO THE COURT WHICH PASSED
IT. (O. 21, r. 53.)

(Title.)

To

The Judge of the Court of

SIR,

I have the honour to inform you that the decree obtained in your
Court on the day of 19 , by
 in suit No. of 19 , in which he was
 and was
has been attached by this Court on the application of
the in the suit specified above. You
are therefore requested to stay the execution of the decree of your Court
until you receive an intimation from this Court that the present notice has

been cancelled or until execution of the said decree is applied for by the holder of the decree now sought to be executed or by his judgment-debtor.

I have the honour, etc.,

Dated the day of 19 . Judge.

— — —
No. 23

NOTICE OF ATTACHMENT OF A DECREE TO THE HOLDER OF THE
DECREE. (O. 21, r. 53.)

(Title.)

To

WHEREAS an application has been made in this Court by the decree-holder in the above suit for the attachment of a decree obtained by you on the day of 19 , in the Court of in Suit No. of 19 , in which was and was ; It is ordered that you, the said be, and you are hereby, prohibited and restrained, until the further order of this Court, from transferring or charging the same in any way.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

— — —
No. 24.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF IMMOVEABLE
PROPERTY. (O. 21, r. 54)

(Title.)

To

WHEREAS you have failed to satisfy a decree passed against you on the day of 19 , in Suit No. of 19 , in favour of , for Rs. ; It is ordered that you, the said be, and you are hereby, prohibited and restrained, until the further order of this Court, from transferring or charging the property specified in the schedule hereunto annexed, by sale, gift or otherwise, and that all persons be, and that they are hereby, prohibited from receiving the same by purchase, gift or otherwise.

GIVEN under my hand and the seal of the Court, this day of 19 .

Schedule.

Judge.

No. 25.

ORDER FOR PAYMENT TO THE PLAINTIFF, ETC., OF MONEY, ETC., IN THE
HANDS OF A THIRD PARTY. (O. 21, r. 56)

(Title.)

To

WHEREAS the following property has been attached
in execution of a decree in Suit No. of 19, passed on
the day of 19, in favour of , for
Rs. ; It is ordered that the property so attached, consisting of
Rs. in money and Rs. in currency-notes, or a sufficient
part thereof to satisfy the said decree, shall be paid over by you, the said
, to .

GIVEN under my hand and the seal of the Court, this day of
19 .

Judge.

No. 26.

NOTICE TO ATTACHING CREDITOR. (O. 21, r. 58)

(Title.)

To

WHEREAS has made application to this Court for
the removal of attachment on placed at your instance
in execution of the decree in Suit No. of 19, this is to give you
notice to appear before this Court on the day of
19, either in person or by a pleader of the Court duly instructed to
support your claim, as attaching creditor.

GIVEN under my hand and the seal of the Court, this day of
19 .

Judge.

No. 27.

WARRANT OF SALE OF PROPERTY IN EXECUTION OF A DECREE FOR MONEY.
(O. 21, r. 66.)

(Title.)

To

The Bailiff of the Court.

THESE are to command you to sell by auction, after giving
days previous notice, by affixing the same in this Court-house, and after
making due proclamation, the property attached un-
der a warrant from this Court, dated the day of
19, in execution of a decree in favour of in Suit No.
of 19, or so much of the said property as shall realize the
sum of Rs. , being the of the said decree and costs still
remaining unsatisfied.

You are further commanded to return this warrant on or before the
day of 19, with an endorsement certifying the

Schedule of Property.

Number of lot.	Description of property to be sold, with the name of each owner where there are more judgment-debtors than one	The revenue assessed upon the estate or part of the estate, if the property to be sold is an interest in an estate or a part of an estate paying revenue to Government.	Detail of any incumbrances to which the property is liable.	Claims, if any, which have been put forward to the property, and any other known particulars bearing on its nature and value.

No. 70.

ORDER ON THE NAZIR FOR CAUSING SERVICE OF PROCLAMATION OF SALE.
(O. 21, r. 66.)

(Title)

To

The Nazir of the Court.

WHEREAS an order has been made for the sale of the property of the judgment-debtor specified in the schedule hereunder annexed, and whereas the day of 19 has been fixed for the sale of the said property, copies of the proclamation of sale are by this warrant made over to you, and you are hereby ordered to have the proclamation published by beat of drum within each of the properties specified in the said schedule, to affix a copy of the said proclamation on a conspicuous part of each of the said properties and afterwards on the Court-house, and then to submit to this Court a report showing the dates on which and the manner in which the proclamations have been published.

Dated the

day of

19

SCHEDULE.

Judge.

No. 31.

CERTIFICATE BY OFFICER HOLDING A SALE OF THE DEFICIENCY OF PRICE
ON A RE-SALE OF PROPERTY BY REASON OF THE PURCHASER'S DEFAULT.
(O. 21, r. 71.)

(Title.)

Certified that at the re-sale of the property in execution of the decree in the above-named suit, in consequence of default on the part of purchaser, there was a deficiency in the price of the said property amounting to Rs. _____ and that the expenses attending such re-sale amounted to Rs. _____, making a total of Rs. _____, which sum is recoverable from the defaulter

Dated the _____ day of _____ 19____

Officer holding the sale.

No. 32.

NOTICE TO PERSON IN POSSESSION OF MOVEABLE PROPERTY SOLD IN EXECUTION (O. 21, r. 79.)

(Title.)

To

WHEREAS _____ has become the purchaser at a public sale in execution of the decree in the above suit of _____ now in your possession you are hereby prohibited from delivering possession of the said _____ to any person except the said _____

GIVEN under my hand and the seal of the Court this _____ day of _____ 19____.

Judge.

No. 33.

PROHIBITORY ORDER AGAINST PAYMENT OF DEBTS SOLD IN EXECUTION TO ANY OTHER THAN THE PURCHASER. (O. 21, r. 79.)

(Title.)

To

and to

WHEREAS _____ has become the purchaser at a public sale in execution of the decree in the above suit of _____ being debts due from you _____ to you _____; It is ordered that you _____ be, and you are hereby, prohibited from receiving, and you _____ from making payment of, the said debt to any person or persons except the said _____

GIVEN under my hand and the seal of the Court, this _____ day of _____ 19____.

Judge.

No. 34.

PROHIBITORY ORDER AGAINST THE TRANSFER OF SHARES SOLD IN
EXECUTION. (O. 21, r. 79.)

(Title.)

To

and , Secretary of Corporation.
 WHEREAS has become the purchaser at a public sale in execution of the decree in the above suit, of certain shares in the above Corporation, that is to say, of standing in the name of you , It is ordered that you be, and you are hereby prohibited from making any transfer of the said shares to any person except the said , the purchaser aforesaid, or from receiving any dividends thereon and you , Secretary of the said Corporation, from permitting any such transfer or making any such payment to any person except the said , the purchaser aforesaid

GIVEN under my hand and the seal of the Court, this day of
 19 .

Judge.

No. 35.

CERTIFICATE TO JUDGMENT-DEBTOR AUTHORIZING HIM TO MORTGAGE,
LEASE, OR SELL PROPERTY. (O. 21, r. 83.)

(Title.)

WHEREAS in execution of the decree passed in the above suit an order was made on the day of 19 for the sale of the under-mentioned property of the judgment-debtor , and whereas the Court has, on the application of the said judgment-debtor, postponed the said sale to enable him to raise the amount of the decree by mortgage, lease, or private sale of the said property or of some part thereof :

This is to certify that the Court doth hereby authorize the said judgment-debtor to make the proposed mortgage, lease, or sale within a period of from the date of this certificate ; provided that all monies payable under such mortgage, lease, or sale shall be paid into this Court, and not to the said judgment-debtor.

Description of property.

GIVEN under my hand and the seal of the Court, this day
 of 19 .

Judge.

No. 36.

NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE.
(O. 21, rr. 90, 92.)

(Title.)

To

WHEREAS the under-mentioned property was sold on the day of 19 in execution of the decree passed in the above-named suit, and whereas the decree-holder [or judgment-debtor] has applied to this Court to set aside the sale of the said property on the ground of a material irregularity [or fraud] in publishing [or conducting] the sale, namely, that

Take notice that, if you have any cause to show why the said application should not be granted, you should appear with your proofs in this Court on the day of 19 , when the said application will be heard and determined.

GIVEN under my hand and the seal of the Court, this day of 19 .

Description of property.

Judge.

No. 37.

NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE.
(O. 21, rr. 91, 92.)

(Title)

To

WHEREAS , the purchaser of the under-mentioned property sold on the day of 19 , in execution of the decree passed in the above-named suit, has applied to this Court to set aside the sale of the said property on the ground that , the judgment-debtor, had no saleable interest therein:

Take notice that, if you have any cause to show why the said application should not be granted, you should appear with your proofs in this Court on the day of 19 , when the said application will be heard and determined.

GIVEN under my hand and the seal of the Court, this day of 19 .

Description of property.

Judge.

No 38.

CERTIFICATE OF SALE OF LAND. (O. 21, r. 94.)

(Title)

THIS is to certify that _____ has been declared the purchaser at a sale by public auction on the _____ day of _____ 19____ of _____ in execution of decree in this suit, and that the said sale has been duly confirmed by this Court

GIVEN under my hand and the seal of the Court, this _____ day of _____ 19____ Judge.

No 39

ORDER FOR DELIVERY TO CERTIFIED PURCHASER OF LAND AT A SALE IN EXECUTION (O. 21, r. 95.)

(Title)

To

The Bailiff of the Court

WHEREAS _____ has become the certified purchaser of _____ at a sale in execution of decree in Suit No. _____, the certified purchaser, as aforesaid, in possession of the same.

GIVEN under my hand and the seal of the Court, this _____ day of _____ 19____ Judge.

No. 40.

SUMMONS TO APPEAR AND ANSWER CHARGE OF OBSTRUCTING EXECUTION OF DECREE (O. 21, r. 97.)

(Title)

To

WHEREAS _____, the decree-holder in the above suit, has complained to this Court that you have resisted (or obstructed) the officer charged with the execution of the warrant for possession :

You are hereby summoned to appear in this Court on the _____ day of _____ 19____ at _____ A.M., to answer the said complaint.

GIVEN under my hand and the seal of the Court, this _____ day of _____ 19____

Judge.

No. 41.

WARRANT OF COMMITTAL. (O. 21, r. 98.)

(Title.)

To

The Officer in charge of the Jail at

WHEREAS the undermentioned property has been decreed to
 , the plaintiff in this suit. and whereas the Court is
 satisfied that , without any just cause, resisted [or obstructed]
 and is still resisting [or obstructing] the said in obtain-
 ing possession of the property, and whereas the said
 has made application to this Court that the said
 be committed to the civil prison;

You are hereby commanded and required to take and receive the said
 into the civil prison, and to keep him imprisoned
 therein for the period of days.

GIVEN under my hand and the seal of the Court, this
 day of 19 .

Judge.

No. 42.

AUTHORITY OF THE COLLECTOR TO STAY PUBLIC SALE OF LAND.
 (Section 72.)

(Title)

To

Collector of

SIR,

In answer to your communication No. , dated
 , representing that the sale in execution of the decree in
 this suit of land situate within your district is objection-
 able, I have the honour to inform you that you are authorized to make
 provision for the satisfaction of the said decree in the manner recommended
 by you.

I have the honour to be.

SIR,

Your obedient Servant,

Judge.

APPENDIX F.
SUPPLEMENTAL PROCEEDINGS.

No. 1.

WARRANT OF ARREST BEFORE JUDGMENT. (O. 38, r. 1.)

(Title.)

To

The Bailiff of the Court.

WHEREAS, the plaintiff in the above suit, claims the sum of Rs. _____ as noted in the margin, and has proved to the

Principal
Interest
Costs

TOTAL

Rs.

GIVEN under my hand and the seal of the Court, this day
of 19 .

Fudge.

No. 2.

SECURITY FOR APPEARANCE OF A DEFENDANT ARRESTED BEFORE
JUDGMENT. (O. 38, r. 2)

(Title.)

WHEREAS, at the instance of _____, the plaintiff in the above suit, _____ the defendant, has been arrested and brought before the Court :

And whereas, on the failure of the said defendant to show cause why he should not furnish security for his appearance, the Court has ordered him to furnish such security:

Therefore I have voluntarily become surety, and do hereby bind myself, my heirs, and executors, to the said Court, that the said defendant shall appear at any time when called upon while the suit is pending and until satisfaction of any decree that may be

passed against him in the said suit; and, in default of such appearance, I bind myself, my heirs, and executors to pay to the said Court, at its order, any sum of money that may be adjudged against the said defendant in the said suit.

Witness my hand at this day of 19 .
(Signed).

Witnesses.

1.

2.

No. 3

SUMMONS TO DEFENDANT TO APPEAR ON SURETY'S APPLICATION FOR
DISCHARGE (O. 38, r. 3)

(Title)

To

WHEREAS who became surety on the
day of 19 for your appearance in the above suit, has
applied to this Court to be discharged from his obligation:

You are hereby summoned to appear in this Court in person on the
day of 19 , at A M., when the said
application will be heard and determined

GIVEN under my hand and the seal of the Court, this day of
19 .

Judge.

No. 4.

ORDER FOR COMMITTAL. (O. 38, r. 4.)

(Title)

To

WHEREAS , plaintiff in this suit, has made
application to the Court that security be taken for the appearance of
 , the defendant, to answer any judgment
that may be passed against him in the suit. and whereas the Court has
called upon the defendant to furnish such security, or to offer a sufficient
deposit in lieu of security, which he has failed to do; It is ordered that the
said defendant be committed to the
civil prison until the decision of the suit, or, if judgment be pronounced
against him, until satisfaction of the decree.

GIVEN under my hand and the seal of the Court, this day of
19 .

Judge.

No. 5.

ATTACHMENT BEFORE JUDGMENT, WITH ORDER TO CALL FOR SECURITY FOR FULFILMENT OF DECREE. (O. 38, r. 5.)

(Title)

To

The Bailiff of the Court.

WHEREAS _____ has proved to the satisfaction of the Court that the defendant in the above suit

These are to command you to call upon the said defendant

on or before the _____ day of

19 _____ either to furnish security for the sum of rupees

when required _____ to produce and place at the disposal of this Court or the value thereof,

or such portion of the value as may be sufficient to satisfy any decree that may be passed against him, or to appear and show cause why he should not furnish security; and you are further ordered to attach the said

and keep the same under safe and secure custody until the further order of the Court, and you are further commanded to return this warrant on or before the _____ day of _____ 19 _____, with an endorsement certifying the date on which and the manner in which it has been executed, or the reason why it has not been executed

GIVEN under my hand and the seal of the Court, this _____ day of

19 _____

Judge.

No. 6.

SECURITY FOR THE PRODUCTION OF PROPERTY. (O. 38, r. 5.)

(Title.)

WHEREAS at the instance of _____, the plaintiff in the above suit.

_____ the defendant, has been directed by the Court to furnish security in the sum of Rs _____ to produce and place at the disposal of the Court the property specified in the schedule hereunto annexed,

Therefore I _____ have voluntarily become surety and do hereby bind myself, my heirs, and executors, to the said Court, that the said defendant shall produce and place at the disposal of the Court, when required, the property specified in the said schedule, or the value of the same or such portion thereof as may be sufficient to satisfy the decree; and in default of his so doing, I bind myself, my heirs, and executors, to pay to the said Court, at its order, the said sum of Rs. _____ or such sum not exceeding the said sum as the said Court may adjudge

Schedule.

Witness my hand at _____ this _____

day of _____ 19 _____

(Signed)

Witnesses.

1.

2.

No. 7.

ATTACHMENT BEFORE JUDGMENT, ON¹ PROOF OF² FAILURE TO FURNISH SECURITY. (O. 38, r. 6.)

(Title.)

To

The Bailiff of the Court.

WHEREAS , the plaintiff in this suit, has applied to the Court to call upon , the defendant, to furnish security to fulfil any decree that may be passed against him in the suit, and whereas the Court has called upon the said to furnish such security, which he has failed to do; These are to command you to attach * ³⁴⁸ the property of the said and keep the same under safe and secure custody until the further order of the Court, and you are further commanded to return this warrant on or before the day of 19 with an endorsement certifying the date on which and the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 8.

TEMPORARY INJUNCTIONS. (O. 39, r. 1.)

(Title)

Upon motion made unto this Court by , pleader of [or Council for] the plaintiff A. B. and upon reading the petition of the said plaintiff in this matter filed [this day] [or the plaint filed in this suit on the day of , or the written statement of the said plaintiff filed on the day of] and upon hearing the evidence of and in support thereof [if after notice and defendant not appearing add, and also the evidence of as to service of notice of this motion upon the defendant C D], This Court doth order that an injunction be awarded to restrain the defendant C D, his servants agents, and workmen, from pulling down, or suffering to be pulled down, the house in the plaint in the said suit of the plaintiff mentioned [or, in the written statement, or petition of the plaintiff and evidence at the hearing of this motion mentioned] being No. 9, Oilmongers Street, Hindupur, in the Taluk of , and from selling the materials whereof the said house is composed, until the hearing of this suit or until the further order of this Court.

Dated this day of 19 .

Judge.

[Where the injunction is sought to restrain the negotiation of a note or bill, the ordering part or of the order may run thus:—] to restrain the defendants and from parting with, out of the custody of them or any of them, or endorsing, assigning, or

negotiating the promissory note [or bill of exchange] in question, dated on or about the etc., mentioned in the plaintiff's plaint [or petition] and the evidence heard at this motion until the hearing of this suit, or until the further order of this Court.

[In Copyright cases] to restrain the defendant C. D., his servants, agents, or workmen, from printing, publishing, or vending a book, called , or any part thereof, until the, etc.

[Where part only of a book is to be restrained] to restrain the defendant C. D., his servants, agents, or workmen, from printing, publishing, selling or otherwise disposing of such parts of the book in the plaint [or petition and evidence, etc.] mentioned to have been published by the defendant as hereinafter specified, namely that part of the said book which is entitled and also that part which is entitled [or which is contained in page to page both inclusive, until , etc.

[In Patent cases] to restrain the defendant C. D., his agents, servants, and workmen, from making or vending any perforated bricks or as the case may be upon the principle of the inventions in the plaintiff's plaint [or petition, etc., or written statement, etc.] mentioned, belonging to the plaintiff, or either of them, during the remainder of the respective terms of the patents in the plaintiff's plaint [or as the case may be] mentioned and from counterfeiting imitating, or resembling the same inventions, or either of them or making any addition thereto, or subtraction therefrom, until the hearing, etc.

[In cases of trade marks] to restrain the defendant C. D., his servants, agents, or workmen, from selling, or exposing for sale, or procuring to be sold, any composition or blacking [or as the case may be] described as or purporting to be blacking manufactured by the plaintiff A. B., in bottles having affixed thereto such labels as in the plaintiff's plaint [or petition, etc.] mentioned, or any other labels so contrived or expressed as, by colourable imitation or otherwise, to represent the composition or blacking sold by the defendant to be the same as the composition or blacking manufactured and sold by the plaintiff A. B., and from using trade-cards so contrived or expressed as to represent that any composition or blacking sold or proposed to be sold by the defendant is the same as the composition or blacking manufactured or sold by the plaintiff A. B., until the etc.

[To restrain a partner from in any way interfering in the business]

to restrain the defendant C. D., his servants and agents, from entering into any contract and from accepting, drawing, endorsing, or negotiating any bill of exchange, note, or written security in the name of the partnership-firm of B. and D., and from contracting any debt, buying and selling any goods, and from making or entering into any verbal or written promise, agreement, or undertaking, and from doing, or causing to be done, any act, in the name or on the credit of the said partnership-firm of B. and D., or whereby the said partnership-firm can or may in any manner become or be made liable to or for the payment of any sum of money, or for the performance of any contract, promise, or undertaking until the, etc.

No. 6

APPOINTMENT OF A RECEIVER. (O. 40, r. 1.)

(Title.)

To

WHEREAS has been attached in execution of a decree passed in the above suit on the day of 19 , in favour of ; You are hereby (subject to your giving security to the satisfaction of the Court,) appointed receiver of the said property under Order XL of the Code of Civil Procedure, 1908, with full powers under the provisions of that Order.

You are required to render a due and proper account of your receipts and disbursements in respect of the said property on and disbursements in respect of the said property on You will be entitled to remuneration at the rate of per cent upon your receipts under the authority of this appointment

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge

No. 7.

BOND TO BE GIVEN BY RECEIVER. (O. 40, r. 3.)

(Title)

KNOW all men by these presents, that we and are jointly and severally bound to of the Court of in Rs to be paid to the said or his successor in office for the time being For which payment to be made we bind ourselves, and each of us, in the whole, our and each of our heirs, executors and administrators, jointly and severally, by these presents.

Dated this day of 19 .

Whereas a plaint has been filed in this Court by against for the purpose of [*here insert the object of suit*]

And whereas the said has been appointed, by order of the above-mentioned Court, to receive the rents and profits of the immoveable property and to get in the outstanding moveable property of in the same plaint named :

Now the condition of this obligation is such, that, if the above-bounden shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the immoveable property, and in respect of the moveable property, of the said " at such periods as the said Court shall appoint, and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court hath directed or shall hereafter direct, then this obligation shall be void, otherwise it shall remain in full force.

Signed and delivered by the above-bounden in the presence of

Note.—If deposit of money is made, the memorandum thereof should follow the terms of the condition of the bond.

APPENDIX G.

APPEAL, REFERENCE, AND REVIEW.

No 1

MEMORANDUM OF APPEAL. (O 41, r 1.)

(Title)

The above named appeals to the
 Court at _____ from the
 decree of _____ in Suit No. _____ of 19 _____,
 dated the _____ day of _____ 19 _____, and sets forth
 the following grounds of objection to the decree appealed from, namely:—

No 2.

SECURITY-BOND TO BE GIVEN ON ORDER BEING MADE TO STAY EXECUTION
 OF DECREE (O. 41, r 5)

(Title)

To

This security-bond on stay of execution of decree executed by
 _____ witnesseth:—

That _____ the plaintiff in Suit No. _____ of 19 _____,
 having sued _____ the defendant, in this Court and a decree having
 been passed on the _____ day of _____ 19 _____ in favour of
 the plaintiff, and the defendant having preferred an appeal from the said
 decree in the _____ Court, the said appeal is still pending.

Now the plaintiff decree holder having applied to execute the decree,
 the defendant has made an application praying for stay of execution, and
 has been called upon to furnish security. Accordingly I, of my own
 free will stand security to the extent of Rs. _____, mortgaging the
 properties specified in the schedule hereunto annexed, and covenant that, if
 the decree of the first Court be confirmed or varied by the Appellate Court,
 the said defendant shall duly act in accordance with the decree of the Ap-
 pellate Court, and shall pay whatever may be payable by him thereunder
 and if he should fail therein then any amount so payable shall be realized
 from the properties hereby mortgaged, and if the proceeds of the sale of the
 said properties are insufficient to pay the amount due, I and my legal re-
 presentatives will be personally liable to pay the balance. To this effect I
 execute this security-bond this _____ day of _____ 19 _____.

Schedule.

Witnessed by

(Signed.)

- 1.
- 2.

No. 3.

SECURITY-BOND TO BE GIVEN DURING THE PENDENCY OF APPEAL
(O. 41, r. 6)

(Title.)

To

This security-bond on stay of execution of decree executed by
witnesseth :—

That _____, the plaintiff in Suit No. _____ of 19____, having
sued _____, the defendant, in this Court and a decree having been
passed on the _____ day of _____
19____ in favour of the plaintiff, and the defendant having pre-
ferred an appeal from the said decree in the _____ Court the said
appeal is still pending.

Now the plaintiff decree-holder has applied for execution of the said
decree and has been called upon to furnish security. Accordingly I, or
my own free will, stand security to the extent of Rs. _____ mortgaging
the properties specified in the schedule hereunto annexed, and covenant
that, if the decree of the first Court be reversed or varied by the Appellate
Court, the plaintiff shall restore any property which may be or has been
taken in execution of the said decree, and shall duly act in accordance with
the decree of the Appellate Court, and shall pay whatever may be payable
by him thereunder, and if he should fail therein then any amount so pay-
able shall be realized from the properties hereby mortgaged, and if the
proceeds of the sale of the said properties are insufficient to pay the amount
due, I and my legal representatives will be personally liable to pay the
balance. To this effect I execute this security-bond this
_____ day of _____ 19____.

Schedule.

Witnessed by

(Signed.)

No. 4.

SECURITY FOR COSTS OF APPEAL. (O. 41, r. 10.)

(Title.)

To

This security-bond for costs of appeal executed by
witnesseth :—

This appellant has preferred an appeal from the decree in Suit No.
_____ of 19____, against the respondent, and has been called
upon to furnish security. Accordingly I, of my own free will, stand security
for the costs of the appeal, mortgaging the properties specified in the
schedule hereunto annexed. I shall not transfer the said properties or any
part thereof, and, in the event of any default on the part of the appellant,
I shall duly carry out any order that may be made against me with regard
to payment of the costs of appeal. Any amount so payable shall be realized

from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due I and my legal representatives will be personally liable to pay the balance. To this effect I execute this security-bond this _____ day of _____ 19____.

Witnessed by _____

Schedule.

Signed)

1.

2.

No. 5.

INTIMATION TO LOWER COURT OF ADMISSION OF APPEAL. (O. 41, r. 13.)

(Title) _____

To _____

You are hereby directed to take notice that _____ the _____
in the above suit, has preferred an appeal to this Court
from the decree passed by you therein on the _____ day of _____
19____.

You are requested to send with all practicable despatch all material
papers in the suit. Dated the _____ day of _____
19____.

Judge.

No. 6.

NOTICE TO RESPONDENT OF THE DAY FIXED FOR THE HEARING
OF THE APPEAL. (O. 41, r. 14.)

(Title) _____

APPEAL from the _____ of the Court of _____
dated the _____ day of _____ 19____.

To _____

Respondent.

TAKE notice that an appeal from the decree of _____ in
this case has been presented by _____
and registered in this Court, and that the _____ day of _____
19____ has been fixed by this Court, for the hearing
of this appeal.

If no appearance is made on your behalf by yourself, your pleader,
or by some one by law authorized to act for you in this appeal, it will be
heard and decided in your absence.

GIVEN under my hand and the seal of the Court, this
day of _____ 19____.

Judge.

[Note.—If a stay of execution has been ordered, intimation should be
given of the fact on this notice.]

[Civ. P. C.—20.]

No. 7.

NOTICE TO A PARTY TO A SUIT NOT MADE A PARTY TO THE APPEAL, 'BUT JOINED BY THE COURT AS A RESPONDENT. (O. 41, r. 20.)

(Title.)

WHEREAS you were a party in suit No. _____ of 19 _____, in the Court of _____, and whereas the _____ has preferred an appeal to this Court from the decree passed against him in the said suit, and it appears to this Court that you are interested in the result of the said appeal:

This is to give you notice that this Court has directed you to be made a respondent in the said appeal, and has adjourned the hearing thereof till the _____ day of _____ 19 _____, at _____ A. M. If no appearance is made on your behalf on the said day and at the said hour, the appeal will be heard and decided in your absence.

GIVEN under my hand and the seal of the Court, this _____ day of _____ 19 _____.

Judge.

No. 8.

MEMORANDUM OF CROSS OBJECTION. (O. 41, r. 22.)

(Title.)

WHEREAS the _____ has preferred an appeal to the Court at _____ from the decree of _____ in Suit No. _____ of 19 _____, dated the _____ day of _____ 19 _____, and whereas notice of the day fixed for hearing the appeal was served on the _____ on the _____ day of _____ 19 _____, the _____ files this memorandum of cross objection under rule 22 of Order XLI. of the Code of Civil Procedure, 1908, and sets forth the following grounds of objection to the decree appealed from, namely:—

No. 9.

DECREE IN APPEAL. (O. 41, r. 35.)

(Title.)

Appeal No. _____ of 19 _____ from the decree of the Court of _____ dated the _____ day of _____ 19 _____.

Memorandum of Appeal.

Plaintiff.

Defendant.

The _____ above-named appeals to the _____ Court at _____ from the decree of _____ in the above suit, dated the _____ day of _____ 19 _____, for the following reasons, namely:—

This appeal coming on for hearing on the _____ day of _____ 19 _____, before _____, in the presence of _____ for the appellant and of _____ for the respondent, it is ordered—

The costs of this appeal, as detailed below, amounting to Rs.
 are to be paid by . The costs of the original suit are to be paid
 by .

Given under my hand this day of 19 .
Judge.

Costs of Appeal.

Appellant.	Amount.			Respondent.	Amount-		
	Rs.	A.	P.		Rs.	A.	P.
1. Stamp for memorandum of appeal.				Stamp for power			
2. Do. for power				Do. for petition			
3. Service of processes ..				Service of processes ...			
4. Pleader's fee on Rs. ..				Pleader's fee on Rs. ..			
Total ..				Total ...			

No. 10.

APPLICATION TO APPEAL IN FORMA PAUPERIS. (O. 44, r. 1.).

(Title)

I the above-named, present the accompanying memorandum of appeal from the decree in the above suit and apply to be allowed to appeal as a pauper.

Annexed is a full and true schedule of all the moveable and immoveable property belonging to me with the estimated value thereof.

Dated the day of 19 .

(Signed.)

Note—Where the application is by the plaintiff he should state whether he applied and was allowed to sue in the Court of first instance as a pauper.

No. 11.

NOTICE OF APPEAL IN FORMA PAUPERIS. (O. 44, r. 1.)

(Title.)

WHEREAS the above-named has applied to be allowed to appeal as a pauper from the decree in the above suit dated the day of 19 and whereas the day of 19 has been fixed for hearing the application, notice is hereby given to you that if you desire to show cause why the applicant should not be allowed to appeal as a pauper an opportunity will be given to you of doing so on the aforementioned date.

Given under my hand and the seal of the Court, this day of 19 .

Judge.

No. 12.

NOTICE TO SHOW CAUSE WHY A CERTIFICATE OF APPEAL TO THE KING IN COUNCIL SHOULD NOT BE GRANTED. (O. 45, r. 3.)

(Title.)

To

TAKE notice that _____ has applied to this Court for a certificate that as regards amount or value and nature the above case fulfils the requirements of section 110 of the Code of Civil Procedure, 1908, or that it is otherwise a fit one for appeal to His Majesty in Council.

The _____ day of _____ 19 _____ is fixed for you to show cause why the Court should not grant the certificate asked for.

Given under my hand and the seal of the Court, this _____ day of _____ 19 _____.

Registrar.

 No. 13.

NOTICE TO RESPONDENT OF ADMISSION OF APPEAL TO THE KING IN COUNCIL. (O. 45, r. 8.)

(Title)

To

WHEREAS _____, the _____ in the above case has furnished the security and made the deposit required by Order XLV., rule 7 of the Code of Civil Procedure, 1908:

Take notice that the appeal of the said _____ to His Majesty in Council has been admitted on the _____ day of _____ 19 _____.

Given under my hand and the seal of the Court, this _____ day of _____ 19 _____.

Registrar.

 No. 14.

NOTICE TO SHOW CAUSE WHY A REVIEW SHOULD NOT BE GRANTED. (O. 47, r. 4.)

(Title.)

To

TAKE notice that _____ has applied to this Court for a review of its decree passed on the _____ day of _____ 19 _____ in the above case. The _____ day of _____ 19 _____ is fixed for you to show cause why the Court should not grant a review of its decree in this case.

Given under my hand and the seal of the Court, this _____ day of _____ 19 _____.

Judge.

MISCELLANEOUS.

Judge.

No. 3.

NOTICE OF PAYMENT INTO COURT. (O. 24, r. 2.)

(Title.)

Take notice that the defendant has paid into Court Rs.
and says that that sum is sufficient to satisfy the plaintiff's claim in full.
X Y, Pleader for the defendant.

To Z, Pleader for the plaintiff.

No. 4.

NOTICE TO SHOW CAUSE. (GENERAL FORM.)

(Title.)

To

WHEREAS the above-named
has made application to this Court that ;
You are hereby warned to appear in this Court in person or by a pleader
duly instructed on the day of 19 , at
o'clock in the forenoon, to show cause against the application,
failing wherein, the said application will be heard and determined *ex parte*.
Given under my hand and the seal of the Court, this day
of 19 .

Judge.

No. 5.

LIST OF DOCUMENTS PRODUCED BY PLAINTIFF (O. 13, r. 1.)
DEFENDANT.

(Title.)

No.	Description of document.	Date, if any, which the docu- ment bears.	Signature of party or pleader.
1	2	3	4

No. 6.

NOTICE TO PARTIES OF THE DAY FIXED FOR EXAMINATION OF A WITNESS
ABOUT TO LEAVE THE JURISDICTION. (O. 18, r. 16)

(Title.)

To

WHEREAS in the above suit application plaintiff (or defendant)
has been made to the Court by
that the examination of
, a witness, required by the said
in the said suit, may be taken immediately; and it has been shown to the
Court's satisfaction that the said witness is about to leave the Court's juris-
diction (or any other good and sufficient cause, to be stated):

Take notice that the examination of the said witness
will be taken by the Court on the day of
19 .

Dated the day of 19 . Judge.

No. 7.

COMMISSION TO EXAMINE ABSENT WITNESS. (O. 26, rr. 4, 18.)

(Title.)

To

WHEREAS the evidence of is required by the
in the above suit; and whereas
; you are requested to take the evidence on
interrogatories [or *viva voce*] of such witness
and you are hereby appointed Commissioner for that purpose. The evi-
dence will be taken in the presence of the parties or their agents if in
attendance, who will be at liberty to question the witness on the points
specified; and you are further requested to make return of such evidence as
soon as it may be taken.

Process to compel the attendance of the witness will be issued by any
Court having jurisdiction on your application

A sum of Rs. , being your fee in the above, is herewith forwarded.

Given under my hand and the seal of the Court, this day of
19 .

Judge.

No. 8.

LETTER OF REQUEST. (O. 26, r. 5)

(Title.)

(Heading :—To the President and Judges of, etc., etc., or as the case may be.)

WHEREAS a suit is now pending in the in
which A. B. is plaintiff and C. D. is defendant; And in the said suit the
plaintiff claims

(abstract of claim);

And whereas it has been represented to the said Court that it is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath touching such matters, that is to say :

E. F., of

G. H., of and

I. J., of

And it appearing that such witnesses are resident within the jurisdiction of your honourable Court;

Now I, as the of the said Court, have the honour to request, and do hereby request, that for the reasons aforesaid and for the assistance of the said Court, you, as the President and Judges of the said, or some one or more of you, will be pleased to summon the said witness (and such other witnesses as the agents of the said plaintiff and defendant shall humbly request you in writing so to summon) to attend at such time and place as you shall appoint before some one or more of you or such other person as according to the procedure of your Court is competent to take the examination of witnesses, and that you will cause such witnesses to be examined upon the interrogatories which accompany this letter of request (or *via voce*) touching the said matters in question in the presence of the agents of the plaintiff and defendant, or such of them as shall, on due notice given, attend such examination.

And I further have the honour to request that you will be pleased to cause the answers of the said witnesses to be reduced into writing, and all books, letters, papers and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal, or in such other way as is in accordance with your procedure, and to return the same, together with such request in writing, if any, for the examination of other witnesses to the said Court.

(Note.—If the Request is directed to a Foreign Court, the words "through His Majesty's Secretary of State for Foreign Affairs for transmission" should be inserted after the words "other witnesses" in the penultimate line of this form.)

— — —
No. 9.

COMMISSION FOR A LOCAL INVESTIGATION, OR TO EXAMINE ACCOUNTS.

(O. 26, rr. 9, 11.)

(Title.)

To

WHEREAS it is deemed requisite, for the purposes of this suit, that a commission for should be issued; You are hereby appointed Commissioner for the purpose of

Process to compel the attendance before you of any witnesses or for the production of any documents, whom or which you may desire to ex-

amine or inspect, will be issued by any Court having jurisdiction on your application.

A sum of Rs. _____, being your fee in the above, is herewith forwarded.

Given under my hand and the seal of the Court this _____ day of _____ 19 ____.

Judge.

No. 10.

COMMISSION TO MAKE A PARTITION. (O. 26, r. 13.)

(Title)

To

WHEREAS it is deemed requisite for the purposes of this suit that a commission should be issued to make the partition or separation of the property specified in and according to the rights as declared in, the decree of this Court, dated the _____ day of _____ 19 ____; You are hereby appointed Commissioner for the said purpose, and are directed to make such inquiry as may be necessary, to divide the said property according to the best of your skill and judgment in the shares set out in the said decree, and to allot such shares to the several parties. You are hereby authorized to award sums to be paid to any party by any other party for the purpose of equalizing the value of the shares.

Process to compel the attendance before you of any witness, or for the production of any documents, whom or which you may desire to examine or inspect, will be issued by any Court having jurisdiction on your application.

A sum of Rs. _____ being your fee in the above, is herewith forwarded.

Given under my hand and the seal of the Court, this _____ day of _____ 19 ____.

Judge.

No. 11.

NOTICE TO MINOR DEFENDANT AND GUARDIAN. (O. 32, r. 3)

(Title.)

To

Minor Defendant.

Natural Guardian.

WHEREAS an application has been presented on the part of the plaintiff (1) Here insert the name of _____ in the above suit for the appointment of a guardian. _____ a guardian for the suit to the minor defendant, you, the said minor, and you (1) _____

_____ are hereby required to take notice that unless within _____ days from the service upon you of this notice, an application is made to this Court for the appointment of you (1) _____ or of some friend of you the minor, to act as

guardian for the suit, the Court will proceed to appoint some other person to act as a guardian to the minor for the purpose of the said suit.

Given under my hand and the seal of the Court, this
day of 19 .

Judge.

No. 12.

NOTICE TO OPPOSITE PARTY OF DAY FIXED FOR HEARING EVIDENCE OF
PAUPERISM. (O. 33. r. 6.)

(Title.)

To

WHEREAS has
applied to the Court for permission to institute a suit against
in forma pauperis under Order XXXIII. of the Code of Civil Procedure,
1908; and whereas the Court sees no reason to reject the application; and
whereas the day of 19 has been fixed for
receiving such evidence as the applicant may adduce in proof of his
pauperism and for hearing any evidence which may be adduced in disproof
thereof:

Notice is hereby given under rule 6 of Order XXXIII. that, in case
you may wish to offer any evidence to disprove the pauperism of the
applicant, you may do so on appearing in this Court on the said
day of 19 .

Given under my hand and the seal of the Court, this
day of 19 .

Judge.

No. 13.

NOTICE TO SURETY OF HIS LIABILITY UNDER A DECREE. (SECTION 145.)

(Title)

To

WHEREAS you did on become liable
as surety for the performance of any decree which might be passed against
the said defendant in the above suit; and whereas a decree
was passed on the day of 19
against the said defendant for the payment of , and whereas
application has been made for execution of the said decree against you:

Take notice that you are hereby required on or before the
day of 19 to show cause why the said decree
should not be executed against you, and if no sufficient cause shall be, with-
in the time specified, shown to the satisfaction of the Court, an order for its
execution will be forthwith issued in the terms of the said application.

Given under my hand and the seal of the Court, this day
of 19 .

Judge.

No. 14.
REGISTER OF CIVIL SUITS. (O 4, r. 2)
Court of the _____ at _____
REGISTER OF CIVIL SUITS in the year 19 ____.

Date of presentation of plaint.															
PLAINTIFF.		DEFEND- ANT.		CLAIM.		APPEAR- ANCE.		JUDGMENT.		APPEAL.		EXECUTION.		RETURN OF EXECUTION.	
Name.		Description.		Place of residence.		Particulars.		Amount or value.		When the cause of action accrued.		Day for parties to appear.		Plaintiff.	
Name.		Description.		Place of residence.		Defendant.		Date.		For whom.		For what, or amount.		Date or decision of appeal.	
Name.		Description.		Place of residence.		Date.		Judgment in appeal.		Date of application.		Date of order.		Against whom.	
No. of suit.		Amount of costs.		For what, and amount if money.		Amount of costs.		Amount paid into Court.		Arrested.		Minute of other Return than Payment or Arrest, and date of every Return.			

NOTE.—Where there are numerous plaintiffs or numerous defendants, the name of the first plaintiff only, or the first defendant only, as the case may be, need be entered in the register.

The Second Schedule.

ARBITRATION.

ARBITRATION IN SUITS.

1. (1) Where in any suit all the parties interested agree that any matter in difference between them shall be referred to arbitration, they may, at any time before judgment is pronounced, apply to the Court for an order of reference.

(2) Every such application shall be in writing, and shall state the matter sought to be referred.

2. The arbitrator shall be appointed in such manner as may be agreed upon between the parties.

3 (1) The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall fix such time as it thinks reasonable for the making of the award, and shall specify such time in the order.

(2) Where a matter is referred to arbitration, the Court shall not, save in the manner and to the extent provided in this schedule, deal with such matter in the same suit.

4 (1) Where the reference is to two or more arbitrators provision shall be made in the order for a difference of opinion among the arbitrators—

(a) by the appointment of an umpire ; or

(b) by declaring that, if the majority of the arbitrators agree, the decision of the majority shall prevail ; or

(c) by empowering the arbitrators to appoint an umpire ; or

(d) otherwise as may be agreed between the parties or, if they cannot agree, as the Court may determine.

(2) Where an umpire is appointed, the Court shall fix such time as it thinks reasonable for the making of his award in case he is required to act.

5. (1) In any of the following cases, namely :—

(a) where the parties cannot agree within a reasonable time with respect to the appointment of an arbitrator, or the person appointed refuses to accept the office of arbitrator, or

(b) where an arbitrator or umpire—

(i) dies, or

(ii) refuses or neglects to act, or becomes incapable of acting, or

(iii) leaves British India in circumstances showing that he will probably not return at an early date, or

(c) where the arbitrators are empowered by the order of reference to appoint an umpire, and fail to do so,

any party may serve the other party or the arbitrators, as the case may be, with a written notice to appoint an arbitrator or umpire.

(2) If, within seven clear days after such notice has been served or such further time as the Court may in each case allow, no arbitrator or no umpire is appointed, as the case may be, the Court may, on application by the party who gave the notice, and after giving the other party an opportunity of being heard, appoint an arbitrator or umpire, or make an order superseding the arbitration, and in such case shall proceed with the suit.

Powers of arbitrator or umpire appointed under paragraph 4 or 5.

6. Every arbitrator or umpire appointed under paragraph 4 or paragraph 5 shall have the like powers as if his name had been inserted in the order of reference.

7. (1) The Court shall issue the same processes to the parties and witness whom the arbitrator or umpire desires to examine, as the Court may issue in suits tried before it.

(2) Persons not attending in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties, and punishments, by order of the Court on the representation of the arbitrator or umpire as they would incur for the like offences in suits tried before the Court.

8. Where the arbitrators or the umpire cannot complete the award within the period specified in the order, the Court may, if it thinks fit, either allow further time, and from time to time, either before or after the expiration of the period fixed for the making of the award, enlarge such period; or may make an order superseding the arbitration, and in such case shall proceed with the suit.

Where umpire may arbitrate in lieu of arbitrators.

9. Where an umpire has been appointed, he may enter on the reference in the place of the arbitrators,—

(a) if they have allowed the appointed time to expire without making an award, or

(b) if they have delivered to the Court or to the umpire a notice in writing stating that they cannot agree.

10. Where an award in a suit has been made, the persons who made it shall sign it, and cause it to be filed in Court, together with any depositions and documents which have been taken and proved before them; and notice of the filing shall be given to the parties.

11. Upon any reference by an order of the Court, the arbitrator or umpire may, with the leave of the Court, state the award as to the whole or any part thereof in the form of a special case for the opinion of the Court, and the Court shall deliver its opinion thereon, and shall order such opinion to be added, to and to form part of the award.

Power to modify or correct award.

12. The Court may, by order, modify or correct an award,—

- (a) where it appears that a part of the award is upon a matter not referred to arbitration, and such part can be separated from the other part and does not affect the decision on the matter referred, or
- (b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision; or
- (c) where the award contains a clerical mistake or an error arising from an accidental slip or omission.

13. The Court may also make such order as it thinks fit respecting the costs of the arbitration where any question arises respecting such costs and the award contains no sufficient provision concerning them.

Where award or matter referred to arbitration may be remitted.

14. The Court may remit the award or any matter referred to arbitration to the reconsideration of the same arbitrator or umpire, upon such terms as it thinks fit,—

- (a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration, unless such matter can be separated without affecting the determination of the matters referred;
- (b) where the award is so indefinite as to be incapable of execution;
- (c) where an objection to the legality of the award is apparent upon the face of it.

15. (1) An award remitted under paragraph 14 becomes void on failure of the arbitrator or umpire to reconsider it. But no award shall be set aside except on one of the following grounds, namely :—

- (a) corruption or misconduct of the arbitrator or umpire;
- (b) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire;
- (c) the award having been made after the issue of an order by the Court superseding the arbitration and proceeding with the suit or after the expiration of the period allowed by the Court, or being otherwise invalid.

(2) Where an award becomes void or is set aside under clause (1), the Court shall make an order superseding the arbitration, and in such case shall proceed with the suit.

16. (1) Where the Court sees no cause to remit the award or any of judgment to be according to the matters referred to arbitration for reconsideration in manner aforesaid and no application has been made to set aside the award, or the Court has refused such application, the Court shall, after the time for making such application has expired, proceed to pronounce judgment according to the award.

(2) Upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with, the award.

Order of reference on agreements to refer.

17. (1) Where any persons agree in writing that any difference between them shall be referred to arbitration, the parties to the agreement, or any of them, may apply to any Court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in Court.

(2) The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs, and the others or other of them as defendants or defendant, if the application has been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

(3) On such application being made, the Court shall direct notice thereof to be given to all the parties to the agreement, other than the applicants, requiring such parties to show cause within the time specified in the notice, why the agreement should not be filed.

(4) Where no sufficient cause is shown, the Court shall order the agreement to be filed, and shall make an order of reference to the arbitrator appointed in accordance with the provisions of the agreement, or, if there is no such provision and the parties cannot agree, the Court may appoint an arbitrator.

18. Where any party to any agreement to refer to arbitration, or any person claiming under him, institutes any suit against any other party to the agreement, or any person claiming under him, in respect of any matter agreed to be referred, any party to such suit may, at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, apply to the Court to stay the suit, and the Court, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the agreement to refer to arbitration, and that the applicant was, at the time when the suit was instituted and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the suit.

19. The foregoing provisions, so far as they are consistent with any agreement filed under paragraph 17, shall be applicable to all proceedings under the order of reference made by the Court under that paragraph, and to the award and to the decree following thereon.

Arbitration without the Intervention of a Court.

20. (1) Where any matter has been referred to arbitration without the intervention of a Court, and an award has been made thereon, any person interested in the award may apply to any Court having jurisdiction over the subject-matter of the award that the award be filed in Court.

(2) The application shall be in writing and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants.

(3) The Court shall direct notice to be given to the parties to the arbitration, other than the applicant, requiring them to show cause within a time specified, why the award should not be filed.

21. (1) Where the Court is satisfied that the matter has been referred to arbitration, and that an award has been made thereon, and where no ground such as is mentioned or referred to in paragraph 14 or paragraph 15 is proved, the Court shall order the award to be filed, and shall proceed to pronounce judgment according to the award.

(2) Upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess of or not in accordance with the award.

22. The last thirty-seven words of section 21 of the Specific Relief Act,* 1877, shall not apply to any agreement to refer to arbitration, or to any award, to which the provisions of this schedule apply.

23. The forms set forth in the Appendix, with such variations as the circumstances of each case require shall be used for the respective purposes therein mentioned.

APPENDIX.

No. 1.

APPLICATION FOR AN ORDER OF REFERENCE.

(Title of suit.)

1. This suit is instituted for *(state nature of claim)*.
2. The matter in difference between the parties is *(state matter of difference)*.

* Act I. of 1877.

3. The applicants being all the parties interested have agreed that the matter in difference between them shall be referred to arbitration.

4. The applicants therefore apply for an order of reference

A. B.

C. D.

Dated the day of 19 .

NOTE.—If the parties are agreed as to the arbitrators, it should be so stated.

No. 2.

ORDER OF REFERENCE.

(*Title of suit*)

Upon reading the application presented on the day of 19 it is ordered that the following matter in difference arising in this suit, namely —

be referred for determination to X and Y, or in case of their not agreeing, then to the determination of Z, who is hereby appointed to be umpire, and such arbitrators are to make their award in writing on or before the

day of 19 , and in case of the said arbitrators not agreeing in an award, the said umpire is to make an award in writing within months after the time during which it is with the power of the arbitrators to make an award shall have ceased

Liberty to a ply.

Given under my hand and the seal of the Court, this day of 19 .

Judge.

No. 3.

ORDER FOR APPOINTMENT OF NEW ARBITRATOR

(*Title of suit*)

Whereas by an order, dated the day of 19 *state order of reference and death refusal, etc., of arbitrator*, it is by consent that Z be appointed in the place of X deceased (or as the case may be) to act as arbitrator with Y, the surviving arbitrator, under the said order, and it is ordered that the award of the said arbitrators be made on or before the day of 19 .

Given under my hand and the seal of the Court, this day of 19 .

Judge

No 4.

SPECIAL CASE.

(Title of suit)

In the matter of an arbitration between A. B. of _____ and
C. D. of _____ the following special case is stated for the
opinion of the Court:—

[Here state the facts concisely in numbered paragraphs.]

The questions of law for the opinion of the Court are:—

First whether _____

Secondly, whether _____

X.

Y.

Dated the _____

day of _____

19 _____

No _____

AWARD.

(Title of suit)

In the matter of an arbitration between A. B. of _____ and
C. D. of _____

WHEREAS in pursuance of an order of reference made by the Court
of _____ and dated the _____ day
of _____ 19 _____ the following matter in difference
between A. B. and C. D., namely, _____

has been referred to us for determination.

Now we, having duly considered the matter referred to us, do hereby
make our award as follows:—

We award—

(1) that _____

(2) that _____

Dated the _____

day of _____

19 _____

X.

Y.

The Third Schedule.

EXECUTION OF DECREES BY COLLECTORS.

Powers of Collector. 1. Where the execution of a decree has been transferred to the Collector under section 68, he may—

- (a) proceed as the Court would proceed when the sale of immoveable property is postponed in order to enable the judgment-debtor to raise the amount of the decree, or
- (b) raise the amount of the decree by letting in perpetuity, or for a term, on payment of a premium, or by mortgaging, the whole or any part of the property ordered to be sold, or
- (c) sell the property ordered to be sold or so much thereof as may be necessary.

2. Where the execution of a decree, not being a decree ordering the sale of immoveable property in pursuance of a contract specifically affecting the same, but being a decree for the payment of money in satisfaction of which the Court has ordered the sale of immoveable property, has been so transferred, the Collector, if after such inquiry as he thinks necessary, he has reason to believe that all the liabilities of the judgment-debtor can be discharged without a sale of the whole of his available immoveable property, may proceed as hereinafter provided

3. (1) In any such case as is referred to in paragraph 2, the Collector shall publish a notice, allowing a period of sixty days from the date of its publication for compliance and calling upon—

Notice to be given to decree-holders and to persons having claims on property.

- (a) every person holding a decree for the payment of money against the judgment-debtor capable of execution by sale of his immoveable property and which such decree holder desires to have so executed, and every holder of a decree for the payment of money in execution of which proceedings for the sale of such property are pending, to produce before the Collector a copy of the decree, and a certificate from the Court which passed or is executing the same, declaring the amount recoverable thereunder ;
- (b) every person having any claim on the said property to submit to the Collector a statement of such claim, and to produce the documents (if any) by which it is evidenced.

(2) Such notice shall be published by being affixed on a conspicuous part of the court-house of the Court which made the original order for sale, and in such other places (if any) as the Collector thinks fit ; and where the address of any such decree-holder or claimant is known, a copy of the notice shall be sent to him by post or otherwise.

4. (1) Upon the expiration of the said period, the Collector shall appoint a day for hearing any representations which the judgment-debtor and the decree-holders or claimants (if any) may desire to make and for holding such inquiry as he may deem necessary for informing himself as to the nature and extent of such decrees and claims and of the judgment debtor's immoveable property, and may, from time to time, adjourn such hearing and inquiry.

(2) Where there is no dispute as to the fact or extent of the liability of the judgment debtor to any of the decrees or claims of which the Collector is informed, or as to the relative priorities of such decrees or claims, or as to the liability of any such property for the satisfaction of such decrees or claims, the Collector shall draw up a statement, specifying the amount to be recovered for the discharge of such decrees the order in which such decrees and claims are to be satisfied, and the immoveable property available for that purpose.

(3) Where any such dispute arises, the Collector shall refer the same with a statement thereof and his own opinion thereon, to the Court which made the original order for sale, and shall, pending the reference, stay proceedings relating to the subject thereof. The Court shall dispose of the dispute if the matter thereof is within its jurisdiction, or transmit the case to a competent Court for disposal and the final decision shall be communicated to the Collector who shall then draw up a statement as above provided in accordance with such decision.

5 The Collector may, instead of himself issuing the notices and holding the inquiry required by paragraphs 3 and 4 draw up a statement specifying the circumstances of the judgment debtor and of his immoveable property so far as they are known to the Collector or appear in the records of his office and forward such statement to the District Court; and such Court shall thereupon issue the notices, hold the inquiry, and draw up the statement required by paragraphs 3 and 4, and transmit such statement to the Collector.

6. The decision by the Court of any dispute arising under paragraph 4 or paragraph 5 shall, as between the parties thereto, have the force of, and be appealable as, a decree.

7. (1) Where the amount to be recovered and the property available have been determined as provided in paragraph 4 or paragraph 5, the Collector may,—

Scheme for liquidation of decrees for payment of money.

- (a) if it appears that the amount cannot be recovered without the sale of the whole of the property available, proceed to sell such property; or,
- (b) if it appears that the amount with interest (if any) in accordance with the decree, and, when not decreed, with interest (if any) at such rate as he thinks reasonable, may be recovered without such sale, raise such amount and interest (notwithstanding the original order for sale)—

- (i) by letting in perpetuity or for a term, on payment of a premium, the whole or any part of the said property; or
- (ii) by mortgaging the whole or any part of such property; or
- (iii) by selling part of such property; or
- (iv) by letting on farm, or managing by himself or another, the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale; or
- (v) partly by one or such modes, and partly by another or others of such modes

(2) For the purpose of managing the whole or any part of such property, the Collector may exercise all the powers of its owner

(3) For the purpose of improving the saleable value of the property available or any part thereof or rendering it more suitable for letting or managing, or for preserving the property from sale in satisfaction of an incumbrance, the Collector may discharge the claim of any incumbrancer which has become payable, or compound the claim of any incumbrancer, whether it has become payable or not, and, for the purpose of providing funds to effect such discharge or composition, may mortgage let, or sell any portion of the property which he deems sufficient. If any dispute arises as to the amount due on any incumbrance with which the Collector proposes to deal under this clause he may institute a suit in the proper Court, either in his own name or the name of the judgment-debtor, to have an account taken, or he may agree to refer such dispute to the decision of two arbitrators, one to be chosen by each party, or of an umpire to be named by such arbitrators.

(4) In proceeding under this paragraph, the Collector shall be subject to such rules consistent with this Act as may, from time to time, be made in this behalf by the Local Government.

8. Where, on the expiration of the letting or management under paragraph 7, the amount to be recovered has

not been realized, the Collector shall notify the fact in writing to the judgment-debtor or his representative in interest, stating at the same time that if the balance necessary to make up the said amount is not paid to the Collector within six weeks from the date of such notice, he will proceed to sell the whole or a sufficient part of the said property; and, if, on the expiration of the said six weeks, the said balance is not so paid, the Collector shall sell such property or part accordingly.

9. (1) The Collector shall, from time to time, render to the Court which made the original order for sale an account of all monies which come to his hands and of all charges incurred by him in the exercise and performance of the powers and duties conferred and imposed on him under the provisions of this schedule, and shall hold the balance at the disposal of the Court.

Collector to render accounts to Court.

(2) Such charges shall include all debts and liabilities from time to time due to the Government in respect of the property or any part thereof, the rent (if any, from time to time due to a superior holder in respect of such property or part, and, if the Collector so directs, the expenses of any witnesses summoned by him

(3) The balance shall be applied by the Court—

(a) in providing for the maintenance of such members of the judgment-debtor's family as are entitled to be maintained out of the income of the property to such amount in the case of each member as the Court thinks fit, and,

(b) where the Collector has proceeded under paragraph 1, in satisfaction of the original decree in execution of which the Court ordered the sale of immoveable property or otherwise as the Court may under section 73 direct, or

(c) where the Collector has proceeded under paragraph 2,—

(i) in keeping down the interest on incumbrances on the property;

(ii) where the judgment-debtor has no other sufficient means of subsistence, in providing for his subsistence to such amount as the Court thinks fit, and

(iii) in discharging rateably the claims of the original decree-holder and any other decree-holders who have complied with the said notice, and whose claims were included in the amount ordered to be recovered.

(4) No other holder of a decree for the payment of money shall be entitled to be paid out of such property or balance until the decree-holders who have obtained such order have been satisfied, and the residue (if any) shall be paid to the judgment-debtor or such other person as the Court directs.

10. Where the Collector sells any property under this schedule, he shall put it up to public auction in one or more lots, as he thinks fit, and may—

(a) fix a reasonable reserved price for each lot;

(b) adjourn the sale for a reasonable time whenever, for reasons to be recorded, he deems the adjournment necessary for the purpose of obtaining a fair price for the property;

(c) buy in the property offered for sale, and re-sell the same by public auction or private contract, as he thinks fit.

11 (1) So long as the Collector can exercise or perform in respect of the judgment-debtor's immoveable property, or any part thereof, any of the powers or duties conferred or imposed on him by paragraphs 1 to 10, the judgment debtor or his representative in interest shall be incompetent to mortgage, charge, lease, or alienate such property or part except with the written permission of the Collector, nor shall any Civil Court issue any process against such property or part in execution of a decree for the payment of money

Restrictions as to alienation by judgment-debtor or his representative, and prosecution of remedies by decree-holders.

(2) During the same period no Civil Court shall issue any process of execution either against the judgment-debtor or his property in respect of any decree for the satisfaction whereof provision has been made by the Collector under paragraph 7.

(3) The same period shall be excluded in calculating the period of limitation applicable to the execution of any decree affected by the provisions of this paragraph in respect of any remedy of which the decree-holder has been temporarily deprived.

12. Where the property of which the sale has been ordered is situate in more districts than one, the powers and duties conferred and imposed on the Collector by paragraphs 1 to 10 shall be exercised and performed by such one of the Collectors of the said districts as the Local Government may by general rule or special order direct.

13. In exercising the powers conferred on him by paragraphs 1 to 10 the Collector shall have the powers of a Civil Court to compel the attendance of parties and witnesses and the production of documents.

The Fourth Schedule.

(See section 155.)

ENACTMENTS AMENDED.

1	2	3	4
Year.	No	Short title.	Amendment.
1870	VII.	The Court-fees Act, 1870.	<p>In article 1 of Schedule I, after the word "plaint," the words "written statement pleading a set-off or counter-claim," and after the word "Act," the words "or of cross-objection" shall be inserted.</p> <p>From Article 11 of Schedule II. the words "from an order rejecting a plaint or" shall be omitted.</p> <p>For the entry in the first column of Schedule II relating to article 19 the following entry shall be substituted, namely :—</p> <p>" Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908."</p>

The Fifth Schedule

(See section 156.)

ENACTMENTS REPEALED.

1	2	3	4
Year	No	Subject or short title.	Extent of repeal
<i>Acts of the Governor-General in Council.</i>			
1870	VII.	The Court-fees Act 1870.	Section 16 and article 15 of Schedule II.
1882	IV.	The Transfer of Property Act, 1882.	Sections 85 to 90 inclusive, 92 to 94 inclusive, 96, 97, 99, and in section 100 the words "and all the provisions heretofore contained as to a mortgagee instituting a suit for the sale of the mortgaged property"
"	XIV.	The Code of Civil Procedure.	The whole Act.
"	XV.	The Presidency Small Cause Courts Act, 1882.	The last paragraph of section 3
1888	VI.	The Debtors Act 1888.	Sections 2 to 8
"	VII	The Civil Procedure Code Amendment Act, 1888.	So much as is unrepealed, except section 1, section 65, and section 66, sub-sections (1), (3) and (4)
"	X.	The Presidency Small Cause Courts Law Amendment Act, 1888	So much as is unrepealed.

THE FIFTH SCHEDULE—(continued.)

(See section 156)

ENACTMENTS REPEALED.

1	2	3	4
Year	No	Subject or short title.	Extent of repeal.
<i>Acts of the Governor-General in Council.</i>			
1890	VIII	The Guardians and Wards Act, 1890.	Section 53.
1891	XII	The Repealing and Amending Act, 1891	So much as relates to Act XIV. of 1882 and Act VII. of 1888.
1892	VI	The Indian Limitation Act and Civil Procedure Code Amendment Act, 1892.	In the title and preamble the words "and the Code of Civil Procedure" and sections 2, 3, and 4
1894	V	The Civil Procedure Code Amendment Act, 1894.	The whole Act
1895	VII.	The Punjab Laws Act Amendment Act, 1895	Sections 1 and 2
"	XIII	The Civil Procedure Code Amendment Act, 1895.	The whole Act.
1900	VI.	The Lower Burma Courts Act, 1900.	So much of the schedules as relate to Act XIV. of 1882.

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